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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-second session

SUMMARY RECORD OF THE 3rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 2 August 2000, at 10 a.m.

Chairperson: Ms. MOTOC

CONTENTS

METHODS OF WORK OF THE SUB-COMMISSION (continued)

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

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GE.00-14581 (E)

The meeting was called to order at 10.05 a.m.

METHODS OF WORK OF THE SUB-COMMISSION (agenda item 1 (c)) (continued) (E/CN.4/2000/112; E/CN.4/Sub.2/1999/47)

1. The CHAIRPERSON invited the members of the Sub-Commission to continue their general discussion of agenda item 1 (c) concerning the methods of work of the Sub-Commission. She read out the following text proposed by the Bureau concerning the presentation of the general debate on agenda item 2, which would be brought to the attention of the Commission on Human Rights:

> "In connection with the implementation of Commission on Human Rights decision 2000/109 and the appropriate parts of the report of the Working Group on enhancing the effectiveness of the mechanisms of the Commission on Human Rights (E/CN.4/2000/112, paras. 51-53), the Bureau agreed with a proposal that the report of the Sub-Commission on its present session should include an annex containing a description of Sub-Commission discussions on violations of human rights in specific countries. The task of drafting such a document will be entrusted to the Rapporteur of the Sub-Commission who will prepare it on the basis of relevant summary records of Sub-Commission meetings devoted to the consideration of agenda item 2."

2. She suggested that the discussion of agenda item 1 (c) be suspended at 11 a.m. so that the Sub-Commission could move on to agenda item 2.

3. Mr. ALFONSO MARTÍNEZ said that he agreed that the discussion should be suspended but not closed.

4. Mr. KARTASHKIN said he thought a decision should be taken on agenda item 1 (c) before moving on to agenda item 2. He could not give the text proposed by the Bureau his unreserved support because, in his view, it did not properly reflect the way in which agenda item 2 should be addressed.

5. Mr. JOINET recommended that the discussion of agenda item 1 (c) be suspended so that the discussion of agenda item 2 could begin. The members of the Sub-Commission could have an exchange of views during the lunch break on the text proposed by the Bureau.

6. Mr. BENGOA said that Mr. Joinet's proposal would be reasonable if there was a long list of speakers on agenda item 2.

7. The CHAIRPERSON said that 31 representatives of non-governmental organizations (NGOs) and 16 representatives of Governments were scheduled to speak.

8. Mr. FAN Guoxiang thanked the Bureau for its proposal but said it raised a great number of difficulties. It was difficult to reflect complex issues in such a short text. He proposed retaining the first part of the Bureau's text, deleting the reference to an annex and specifying that, in the case of agenda item 2, the summary records of the discussion on the item would be the only material transmitted to the Commission.

9. Mr. EIDE expressed support for Mr. Joinet's proposal, given the large number of NGOs scheduled to speak on agenda item 2. The question of the Sub-Commission's report on that item had always given rise to debate. The report on the current session should be simple, summarizing the views of members in an annex. He therefore supported the Bureau's text, especially the reference to the summary records. Under the circumstances, long discussions on the subject would serve no purpose and it was preferable to move on as rapidly as possible to agenda item 2.

10. Mr. KARTASHKIN said he noted that the Working Group on enhancing the effectiveness of the mechanisms of the Commission on Human Rights merely indicated, in paragraph 52 of its report, that the Sub-Commission's discussions "would be reflected in the summary records of the debate". There was no mention of an annex or any other type of document. The summary records would reflect the different views expressed. He therefore proposed the deletion from the Bureau's text of the words "an annex containing a description of Sub-Commission discussions" and their replacement by "a balanced description of the Sub-Commission's discussions".

11. Mr. ALFONSO MARTÍNEZ said he was unable to support the proposal by Mr. Joinet and Mr. Bengoa to move immediately to the consideration of agenda item 2 and to hold informal consultations on the Bureau's proposal. A public discussion of the matter was necessary and the debate should continue until 11 a.m.

12. Mrs. WARZAZI asked the Secretariat whether summary records of the Sub-Commission's proceedings were still prepared.

13. The CHAIRPERSON said that such records were indeed prepared.

14. Mr. YIMER thanked the Bureau for its proposal but said he felt it did not comply with the Commission's request. Paragraph 52 of the Working Group's report clearly indicated that the Sub-Commission's discussions should be given full coverage in summary records, which the Commission invited the Sub-Commission to forward to it. Nothing more. The idea of preparing an annex was not in keeping with the Commission's decision. The text proposed by the Bureau was therefore unacceptable and should be amended.

15. Mr. PINHEIRO said that the Bureau's text faithfully reflected the practice of the Sub-Commission, which had been reviewing serious violations of human rights in all countries for 33 years, and was in conformity with the wishes of the Commission as set forth in paragraph 52 of document E/CN.4/2000/112. He was therefore in favour of an immediate suspension of the discussion on that item and of moving on to agenda item 2, on the understanding that the text proposed by the Bureau could be discussed again at a later stage.

16. Mr. EIDE said that, although the Sub-Commission was no longer authorized to adopt country-specific resolutions, it was still competent to decide on the structure of its report to the Commission.

17. Ms. HAMPSON expressed support for a suspension of the discussion of agenda item 1 (c). She did not agree with the members who opposed the preparation of an annex

because there was nothing in the Commission document mentioned that prohibited it. Moreover, the Commission had issued no instruction about the structure of the report on agenda item 2. While the Sub-Commission could no longer adopt country-specific resolutions, there was nothing to prevent it from reporting on its discussions on the matter in whatever way it chose. She therefore supported the Bureau's proposal, which she found a balanced one.

18. Mr. JOINET asked the Secretariat to distribute to the members of the Sub-Commission the text of Commission resolution 8 (XXIII) of 16 March 1967, which constituted the frame of reference for the Sub-Commission's work and which had not been amended by the Commission. The Commission's new recommendations concerning the Sub-Commission's work on agenda item 2 should be interpreted exclusively in the light of that document.

19. In his view, the text proposed by the Bureau was a moderate one and a proper response to the Commission's statement that "there could be a loss in human rights terms if the Sub-Commission were unable to give any consideration to specific country situations". The principles underlying the Sub-Commission's mandate were not therefore being questioned; it was only the manner of their implementation that had been modified.

20. Mr. PARK said he was in favour of suspending the discussion at 11 a.m. so that agenda item 2 could be taken up as soon as possible. He also supported the text proposed by the Bureau, which he considered to be a balanced one.

21. Mr. RODRÍGUEZ CUADROS said he supported the text proposed by the Bureau. In his view, it was clear from paragraphs 52 and 53 of the Working Group's report that the Commission recommended that the Sub-Commission should continue to discuss the human rights situation in certain countries. It was equally clear that the discussions could not give rise to resolutions but would be reflected in the summary records. Lastly, the Commission established a general framework for the discussion of specific country situations but made no comment on the structure of the Sub-Commission's report, which was therefore the Sub-Commission's responsibility.

22. Mr. YIMER said that the recommendation of the Working Group as adopted by the Commission was quite clear: the Sub-Commission's deliberations should be reflected in the summary records, which should continue to be forwarded to the Commission. No additional analytical or interpretative work on the part of the Rapporteur was envisaged.

23. Mrs. DAES, expressing support for comments made, inter alia, by Mr. Eide, Ms. Hampson and Mr. Joinet, said that nothing in the text of paragraph 52 of the report of the Working Group on enhancing the effectiveness of the mechanisms of the Commission on Human Rights prevented the Sub-Commission from structuring its report as it deemed fit. The Sub-Commission could decide to attach an annex to its report detailing the debate on country-specific human rights violations. On an exceptional basis, it would be desirable for summary records on those issues to be produced in extenso.

24. Mr. KARTASHKIN, speaking on a point of order, suggested that the Sub-Commission should request the Chairman of the Commission on Human Rights to clarify the Commission's decision on the issue.

25. Mr. ALFONSO MARTÍNEZ said that he could not support the Bureau's proposal, for three reasons. Firstly, the proposal departed too much from the precise instructions provided by the Commission in paragraph 52 of the Working Group's report. Secondly, the Bureau's proposal did not reflect a further point made in that paragraph, namely, the possibility that the Sub-Commission might continue to discuss situations not being dealt with in the Commission. His third objection concerned the extremely heavy extra workload which would fall to the Sub-Commission's Rapporteur if the latter was to be entrusted with the task of summarizing the debates on item 2.

26. Mr. SIK YUEN said that it would be particularly helpful for the Sub-Commission to have at its disposal an annex to the report containing a well-structured text in which no names would appear, and which would reflect all the points of view expressed during the debate. In case of any difficulty, it would always be possible to refer back to the summary records. It would be helpful if the Sub-Commission could entrust the drafting of such an annex to the Rapporteur.

27. Mrs. WARZAZI suggested that, in the text proposed by the Bureau, a compromise formula be inserted after the words "the report of the Sub-Commission on its present session should include" to read: "in an extended equilibrated summary record of the Sub-Commission a description of Sub-Commission discussions on violations of human rights under item 2. This extended summary record will be prepared by the Rapporteur of the Sub-Commission and circulated among all members before its adoption".

28. Mr. GOONESEKERE (Rapporteur) said that he shared Mr. Alfonso Martinez's concern about the additional workload that it was proposed to entrust to him. Given that there was a consensus regarding the need for a summary record of the discussions on agenda item 2, it remained to be decided how it would be produced, and whether it would appear in the body of the report or as an annex. The Rapporteur could do no more than to read through the summary records and modify them, if necessary, to ensure that they faithfully reflected the debate.

29. Mr. JOINET said that he saw no reason why the summary record of the debate should not form part of the body of the report under item 2 of the agenda. However, for historical reasons, it had been decided that the central part of the Sub-Commission's report should be of a procedural nature; the question under consideration was, however, a substantive one, since the Sub-Commission was required to submit information on the question of the violation of human rights and fundamental freedoms to the Commission. If the Sub-Commission contented itself with merely submitting a few lines to the Commission on so vital a question, its work would become meaningless and he himself would refrain from taking the floor on the issue. As for the summary records, they reflected the entirety of the debate and included all the speakers. However, it was only the 26 members of the Sub-Commission who had the mandate of reporting to the Commission.

30. Mr. OGURTSOV said that the most rational solution would be to adopt Mrs. Warzazi's proposal.

31. Mrs. WARZAZI proposed that the meeting to be held by the Bureau concerning the description of the general debate on item 2 of the agenda should be an open one and include all persons interested in the question, so that a compromise formula might be quickly reached.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (agenda item 2) (E/CN.4/Sub.2/2000/4-8, 35, 36, 38 and 39; E/CN.4/Sub.2/2000/NGO/1 and 2; E/CN.4/2000/30)

32. The CHAIRPERSON reminded the observers for Governments that, in their statements, they must not refer to the situation of human rights in countries other than their own.

33. Ms. PETROULA (International Federation of Human Rights Leagues) urged the Sub-Commission to respond to the violations of human rights in Congo-Brazzaville, Algeria, Tunisia and Chechnya.

34. Following a request by the Congolese Observatory for Human Rights, her organization had sent an international mission of inquiry to Congo-Brazzaville. The inquiry had revealed the country's police force to be an oppressive and repressive machine; conditions of detention, extrajudicial executions and disappearances were also matters for concern. The Government had, indeed, made efforts, but there would be no true stability in the country until permanent institutions were established and the perpetrators of violations were brought to justice.

35. Her organization had also sent an international mission to Algeria, at the invitation of President Bouteflika. It deplored the persistence of serious and systematic human rights violations in that country. Enforced disappearances were common and their number often underestimated. Moreover, the judiciary was still under State control. Civil freedoms were not respected, and the situation was exacerbated further by the state of emergency in force since January 1992.

36. In Tunisia, the human rights situation was also difficult. Human rights defenders were subjected to police harassment, or to deportation in the case of foreigners.

37. Lastly, with respect to Chechnya, her organization wished to stress the massive, generalized and systematic nature of the violations of human rights and international humanitarian law perpetrated against the civilian population. The Russian forces continued their pillaging and mopping-up operations, which resulted in arbitrary arrests, the victims not being accorded legal protection of any kind. She urged the Sub-Commission to monitor the evolution of the situation in Chechnya and to draw conclusions from the failure of the Government of the Russian Federation to meet the commitments it had undertaken.

38. Mr. SHARAFEDDIN (International Organization for the Elimination of All Forms of Racial Discrimination) said that it was unacceptable that a law as discriminatory as the law of return adopted by Israel could have been promulgated, in that it allowed any Jew, whatever his or her citizenship, to settle in Palestine and denied Palestinians the right to return to their own homes and to recover their property, merely on the grounds that they were not Jewish. The Jewish members of his own organization made no secret of their uneasiness over such a discriminatory law.

39. A further example of discrimination was the insistence of the United States on maintaining the unjust embargo it had imposed on the Iraqis in the framework of a policy of hatred and vengeance towards the country. Humanity ought to be ashamed to allow a continuance of that embargo which was causing the deaths of thousands of Iraqi mothers and children because of the lack of food and health care.

40. With regard to Muslim countries, the United States failed to comply with Security Council resolutions, such as resolution 242 concerning the frontiers of Israel. The Charter of the United Nations and the rules of international law must be duly respected; his colleagues in other NGOs should urge that an end be put to situations of the kind he had described.

41. Mr. DARMI (Netherlands Organization for International Development Cooperation, NOVIB), referring to the human rights situation in Indonesia, said that, although that country had experienced many changes during the past year and was heading towards democracy and respect for human rights, much remained to be done. The Moluccas, and, more recently, Sulawesi, had seen unprecedented violence, while serious human rights violations continued to be committed by military forces in Aceh and West Papua. Cases of arbitrary detention, torture, disappearances, rape and other human rights violations were widespread in Aceh.

42. In the Moluccas, where a state of emergency had been proclaimed on 26 June 2000, there had been thousands of killings and over a million people had been displaced, including many unarmed civilians. The ongoing conflict had made it extremely difficult to bring humanitarian assistance to the region's inhabitants.

43. Despite the commitments undertaken by the Indonesian Government, de facto impunity prevailed. The Indonesian Government should investigate human rights violations so that impunity and injustice might be ended and compensation accorded to the victims. Legal reform involving the incorporation of international standards was necessary, as was implementation at the national level. In relation to East Timor, where massive violations had been committed, the parliament had yet to adopt legislation to establish a national tribunal.

44. Indonesia should be pressurized to start implementing the conventions it had ratified, particularly the Convention against Torture. The country should also implement the recommendations made by the Special Rapporteur on violence against women and the Working Group on Arbitrary Detention. Moreover, the Government would do well to invite the Special Rapporteur on extrajudicial, summary or arbitrary executions to visit Indonesia. With regard to the reform of the judiciary, the Special Rapporteur on the independence of judges and lawyers should also be invited to visit the country. Lastly, Indonesia should intensify its technical cooperation programme with the Office of the High Commissioner for Human Rights.

45. Mrs. WARZAZI said that, although human rights were currently recognized by an overwhelming majority of States, they were being respected less and less in practice, even in States which claimed to champion them. Violence was breaking out everywhere without anyone attempting to prevent it, refugees were constantly growing in number and, what was worse, being exploited, particularly the women. The great Powers day by day resorted to bombardments with utter impunity. Mr. Mandela had rightly accused London and Washington,

in an article published in the Guardian in April 2000, of encouraging world disruption, ignoring the positions of other States and deeming themselves entitled to play the role of world policeman without the sanction of the Security Council.

46. Furthermore, as stated in the report of the United Nations Development Programme (UNDP) of the previous June, the enjoyment of human rights could not be confined to rich countries, and the right of not being hungry was just as much a right as that of not being tortured. In other words, economic, social and cultural rights were of crucial importance. As Mr. Matsuura, the Director-General of the United Nations Educational, Scientific and Cultural Organization (UNESCO), had recalled at the World Education Forum in Dakar, it was not normal to expect certain countries to restructure their economies at the cost of education.

47. Globalization was causing havoc in the developing countries and accentuating inequalities. In such conditions peace was impossible. The United Nations Secretary-General, in his report on globalization and interdependence, had himself recognized that the costs of globalization outweighed its advantages for a large number of developing countries, the latter should not be saddled with models which were alien to them. Like the author of La mondialisation sauvage, Bruno Lempen, she thought that a thorough overhaul of international organization was needed, involving the establishment of thoughtful dialectic between international civil society and the existing inter-State institutions. It was heartening to note that, despite the diversity of their campaigns, NGOs were finding themselves on common fronts, engaging in dialogue and providing reasons for confidence in the future of human rights.

48. Mr. PINHEIRO, reverting to the subject of summary records, pointed out to the members of the Sub-Commission that the summary records at the previous session of the Sub-Commission's deliberations on agenda item 2 filled no less than 52 pages.

49. With regard to decisions taken at the previous session concerning certain countries, he proposed that the Sub-Commission should keep in touch with any follow-up thereto and should invite Government observers and NGO representatives present at the session to provide clarification or further information.

50. The previous year, the Sub-Commission had welcomed the announcement, by the representative of the Government of Belarus, that the Working Group on Arbitrary Detention and the Special Rapporteur on the independence of judges and lawyers would be invited to Belarus. The Belarus mission had also announced that its Government would withdraw its reservations to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Sub-Commission had not yet received information on the steps taken pursuant to those statements.

51. He noted with satisfaction that Mrs. Daes, Chairperson of the Working Group on Indigenous Populations, who had been invited to Mexico, had visited that country during the current year.

52. He noted with satisfaction that the Secretary-General had submitted a very full report (E/CN.4/2000/30) on the situation of human rights in the Republic of the Congo, in response to the request made to him by the Sub-Commission in its resolution on that country. The

Secretary-General had also submitted a detailed report on the continuing of obligations under international human rights instruments, as requested by the Sub-Commission in its relevant resolution. The High Commissioner, for her part, had prepared a report on the security situation of certain human rights defenders (E/CN.4/Sub.2/2000/5), in response to the Sub-Commission's request in its resolution on violations of the rights of human rights defenders in all countries.

53. Referring to the death penalty in relation to juvenile offenders, he welcomed the inquiry currently being undertaken by the United Nations Centre for International Crime Prevention, at Vienna, by means of a questionnaire addressed to Governments.

54. The statement on Togo by the Chairperson of the Sub-Commission, and the Sub-Commission's deliberations on the topic, had been provided with firm continuity through the establishment of an international commission of inquiry, of which he himself was a member. The other two members, Mr. Abakar and Mr. Souna, were present at the Sub-Commission's current session. He therefore requested the Chairperson and members to grant the floor to Mr. Abakar so that he could make a brief statement on the current stage of the commission's work.

55. The CHAIRPERSON said that she saw no difficulty in doing so.

56. Mr. ALFONSO MARTÍNEZ said he objected on the grounds that such authorization might create an awkward precedent, the more so as the Sub-Commission was under pressure to limit the time allowed for speakers.

57. Mr. PINHEIRO, speaking on a point of order, said he took the liberty of making the request because he had not used up his own allotted time, the remainder of which he felt would amply suffice for the brief statement Mr. Abakar wished to make.

58. Mr. ALFONSO MARTÍNEZ said it was out of order for a non-member of the Sub-Commission to take the floor in the context of a member's statement. He would have no difficulty, however, in having the statement delivered at another time, should the Sub-Commission decide to grant the floor.

59. Mr. JOINET, supported by Mr. EIDE, said that the question of when a non-member actually took the floor was irrelevant, and that it would be more logical to hear the statement at once.

60. Mr. ALFONSO MARTÍNEZ insisted that such authorization should be granted only as an exception.

61. The CHAIRPERSON gave the floor to the Chairman of the international commission of inquiry on Togo.

62. Mr. ABAKAR (Chairman of the international commission of inquiry on Togo), supplementing the information provided by Mr. Pinheiro, said that the commission of inquiry planned to meet from 31 July to 4 August 2000, it had considered the way in which it should proceed, had adopted rules of procedure and would begin its inquiries around 10 September 2000.

63. Mr. GUISSE said that many developing countries, whose peoples were already struggling to survive because of food and health-care shortages, were the theatre of armed conflict, made worse by the proliferation of weapons with a high capacity of destruction. Africa, in particular, faced the problem of insecurity and instability because of the ravages of armed bands. Of the weapons used in such conflicts, some 85 per cent were manufactured by the five Powers which sat in the Security Council. In the absence of any regulations governing the production, supply and use of such weapons, appropriate legislation would be required. Every nation had a right to peace, and that peace must be based on freedom, equality and justice - principles which often remained a dead letter. The people of Zimbabwe provided a case in point; with the dismantling of the apartheid system, the inhabitants of Zimbabwe had been promised restitution of their stolen property. Twenty years later, they were still calling fruitlessly for restitution or, rather, for the legal redistribution of land. The problem should be speedily and peacefully settled in an equitable way.

64. The United Nations Secretary-General had stated, in a recent report, that the responsibility of the international community and certain States had been recognized in respect of the genocide in Rwanda and Burundi. He wondered whether that acknowledgement would lead to compensation for victims or whether it was a mere comment.

65. Lastly, efforts should be made to bring the benefits of scientific and technological advances to the least advantaged countries also. Peace and democracy could never really prevail in the conditions of poverty in which some peoples currently lived.

66. Mr. YOKOTA said that there was a current "humanization" of international relations in the sense that the real driving force was no longer the nation State, greedy for territorial conquest and unleashing war, but the world's peoples. Through the United Nations, whose Charter began with the words "We the peoples of the United Nations", the peoples had taken their destiny into their own hands. That was not to say that States no longer had a role to play and would disappear, but rather that their function had changed to that of henceforth caring for their citizens' well-being. Thus, States were obliged firstly to promote and protect human rights - to begin with, by preventing their violation. The scope of prevention included human rights training for those responsible for law enforcement, for civil service personnel and for members of the armed forces, and involved the alignment of domestic legislation with international human rights standards. States were likewise obliged to respect all persons' basic rights and freedoms without distinction based on nationality, sex, social or ethnic origin or religious beliefs. If States failed to stop human rights violations, whether by individuals or groups, on their territory, including those committed by private companies or transnational corporations, they were committing a serious offence. It followed naturally that States had an obligation to punish violations and bring their perpetrators to justice; it was regrettable, in that regard, that many violations remained unpunished. The State also had the duty to compensate the victims of violations when it had been responsible for them; it should likewise provide the requisite victim support even when it had not been directly responsible.

67. Some might object that too much was being asked of States but, unless the latter complied with those obligations, they could no longer justify their existence.

68. Mr. PARY (Indian Movement "Tupaj Amaru") said that the deep wounds inflicted on the Serb people by NATO forces a year-and-a-half earlier had not yet healed and the Western Powers continued their military occupation of Kosovo, transforming the province into a protectorate reminiscent of colonial times, without, however, finding a solution to the refugee problem.

69. The instigators of the acts in breach of international conventions that had been committed during the aggression against the sovereign State of Yugoslavia, including the destruction of the Serb television station, the attack on the Chinese Embassy, the bombing of a column of Kosovar refugees of Albanian origin and the use of missiles containing depleted uranium, must be brought to trial and punished in exemplary fashion by the international courts.

70. In the Middle East, the very heavy sanctions imposed on Iraq for 10 years by the implacable will of the United States condemned the Iraqi people to a slow death, as witnessed by the reports of the International Committee of the Red Cross (ICRC) and officials of the United Nations Humanitarian Programme in Iraq and UNESCO. Security Council resolution 986, on "oil-for-food", had not made it possible to remedy the consequences of the war and the economic sanctions.

71. The international community should no longer tolerate attempts by an economic and military Power to discipline small countries like Iraq and Cuba and to condemn their people to humiliation, hunger and sickness. His organization therefore asked that the embargoes on Iraq, Cuba and the Democratic People's Republic of Korea be lifted immediately and unconditionally.

72. Mr. DIAZ DE JESUS (International Indian Treaty Council) said that, despite the adoption by the Sub-Commission of resolution 1998/4, gross and systematic violations of human rights continued to take place in Mexico. Moreover, the perpetrators of the massacres in Aguas Blancas, State of Guerrero, on 28 June 1995, Acteal, State of Chiapas, on 22 December 1997, carried out by paramilitary groups, and El Charco, State of Guerrero, on 11 June 1998, carried out by the Mexican army, had still not been prosecuted.

73. Many indigenous people, mainly women, had been sterilized against their will by an organization working for the Mexican State. Such an act contravened article II of the Convention on the Prevention and Punishment of the Crime of Genocide.

74. In the San Quintin valley, Baja California, indigenous people, including pregnant women and children, were employed on farms in conditions of near slavery and with no protection against dangerous chemicals. The Sub-Commission was asked to investigate that situation.

75. It was also a cause of great concern that the San Andrés accords, signed on 16 February 1996 by the Zapatista National Liberation Army (CEZLN)and the Mexican Government, particularly the provisions on indigenous rights and culture, had not been implemented.

76. His organization requested the Sub-Commission to urge the Mexican authorities to release political prisoners and to shed a light on what had happened to the detainees who had disappeared, to ensure that the perpetrators of human rights violations were tried and punished

and to do all in its power to reopen the dialogue aimed at putting an end to the conflict in Chiapas. In that connection, the Sub-Commission, as a body of experts, should offer its good services to the signatories of the San Andrés accords. It should also request the Secretary-General to keep it informed of developments in the situation at its next session and decide to keep the issue under review with an eye to taking the steps it might consider appropriate to promote and protect human rights and fundamental freedoms in Mexico.

77. Mr. PRADHIR TALUKDER (Asian Buddhist Conference for Peace) said there were few examples of successful peace processes between Governments and indigenous peoples. In Nagaland, India, the authorities had had to impose a curfew after three Buddhist monks had been murdered by extremists. Security and the human rights situation in that State had thus not improved.

78. In Bangladesh, the Chittagong Hill Tracts Peace Agreement between the Government and the Jana Samhati Samiti (JSS) could not, basically, be implemented because of a lack of cooperation by the local and central authorities. Opponents of the agreement had murdered 23 members of the JSS and kidnapped more than 100 others. The presence of thousands of members of the security forces, who had recently killed five innocent indigenous people, and of 400,000 settlers continued to pose a serious threat to peace in the region. The Government of Bangladesh and the international community should ensure that the provisions of the agreement he had mentioned were respected so that a lasting peace could be established.

79. Mr. VARELA (American Association of Jurists) said that, since 1941, the United States Navy had been using Vieques Island, Puerto Rico, for military manoeuvres, to the detriment of the island's economy and its inhabitants' health. In particular, it used ammunition containing uranium, plutonium, heavy metals and other dangerous substances during its shelling activities. Vieques Island had the highest cancer rate of any of the islands in the Puerto Rican archipelago. The child mortality rate there was also high.

80. Thus, the United States Government was not only violating the right to self-determination of the Puerto Ricans, it was also depriving some of them of their natural resources and means of subsistence. It was worth pointing out in that connection that, two weeks previously, the Special Political and Decolonization Committee of the United Nations had adopted a resolution recommending that the General Assembly should consider the situation of the people of Vieques in the context of resolving the outstanding colonial problem of Puerto Rico.

81. After suspending its military manoeuvres at Vieques for over a year following the death of an inhabitant caused by the explosion of one of the bombs it had used, the United States Navy had resumed them despite the peaceful opposition of demonstrators, many of whom had been arrested and locked up in federal prisons in the United States.

82. His organization requested the Sub-Commission to recommend to the Commission on Human Rights that the Special Rapporteur on toxic waste should visit Vieques to study the situation there. He also asked the Sub-Commission to condemn the United States military manoeuvres at Vieques.

83. Mr. OZDEN (Centre Europe Tiers-Monde) said that his organization was deeply concerned at the persistence of serious human rights violations in Turkey. On 24 February 2000, 16 members and leaders of the pro-Kurdish People's Democracy Party (HADEP) had been sentenced to three years and nine months in prison for supporting the Kurdish Workers Party (PKK). On 1 June 2000, the same court had sentenced the President of HADEP to one year in prison for "separatist propaganda". On 21 February 2000, three mayors of towns in Turkish Kurdistan, Mr. Feridun Celik, Mr. Mehmet Selim Özalp and Mr. Feyzullah Karaaslan, had been arrested. Released a week later, they stated that they had been tortured during their detention. They had been charged with carrying out activities in coordination with the PKK, and faced a possible seven-year prison sentence.

84. On 12 May 2000, the Diyarbakir branch of the Turkish Human Rights Association (IHD) had been closed, together with the Women's Cultural Centre in Dicle and the Meteris Cultural Centre in Diyarbakir. A Turkish-Kurdish dictionary had been seized 10 days after it was published, on the order of the Governor of Batman, on 18 June 2000. On 5 July 2000, the intervention by security forces in Burdur prison had left 61 prisoners seriously injured. Not only had the injured received no medical care, they had also been subjected to torture for several days. According to a survey of around 200 female prisoners, 85 per cent of them had been sexually abused. In the previous year, IHD had recorded 199 summary executions of detainees and 32 disappearances.

85. In the light of that situation, his organization requested the Sub-Commission to recommend that the Commission on Human Rights adopt a resolution on Turkey at its fifty-seventh session.

86. Mr. BENGOA said that many Latin American countries where systematic and widespread violations of human rights had been committed under various dictatorships in the 1970s and 1980s, were hesitating between justice and impunity. The choice they made would have serious repercussions on the future of the peoples of Latin America.

87. Some countries, like Colombia, were plagued by generalized violence. The Sub-Commission should question the effectiveness of the machinery set up to deal with that situation in the shape of a local branch of the Office of the High Commissioner for Human Rights (OHCHR), which was nevertheless considered more useful than a special rapporteur.

88. As Mr. Diaz Uribe had said in the past, when it came to human rights, international pressure should not come solely from the great Powers, whose complex geopolitical interests had little to do with core human rights issues, as shown by the United States intervention aimed at controlling narcotics production and trade. That was why the Sub-Commission needed to focus its discussions on a review of the human rights mechanisms.

89. At the beginning of the 1990s, the signing of the Viña del Mar Agreement, in which the countries of Latin America affirmed their commitment to democracy, had seemed to mark the beginning of a new phase for the continent which, it was thought, was about to enjoy a period of prosperity thanks to economic opening-up and democracy. It was quickly realized that things were not that simple. The States had been strongly affected by globalization. Some had managed to establish new forms of democracy. Others, like Mexico, had faced a certain amount

of unrest. It was to be hoped that Mexico's new Government would be able to implement the San Andrés accords, release the indigenous prisoners, consolidate freedoms, demilitarize the areas inhabited by indigenous peoples and establish a new relationship between the State and those peoples.

90. In Peru, observers from the Organization of American States (OAS) had expressed reservations about the electoral process leading up to the re-election of President Fujimori. It was also a matter of concern that a large number of Peruvians were forced for various reasons to emigrate in very difficult circumstances. The full enjoyment of human rights could not be guaranteed unless there was a transparent democratic system in place.

91. Generally speaking, widespread and systematic violations of human rights in many Latin American countries had given way to what could be called "low-intensity" violations affecting individuals or certain social groups such as indigenous people. Changes to the 1503 procedure had deprived the Sub-Commission of a tool for studying such cases. It would therefore need to reflect on mechanisms it could set up to remedy that situation.

The meeting rose at 1 p.m.

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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-second session

SUMMARY RECORD OF THE 4th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 2 August 2000, at 3 p.m.

Chairperson: Ms. MOTOC

CONTENTS

ORGANIZATION OF WORK (continued)

(c) METHODS OF WORK OF THE SUB-COMMISSION (continued)

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (continued)

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GE.00-14585 (E)

The meeting was called to order at 3.10 p.m.

ORGANIZATION OF WORK (agenda item 1) (continued)

(c) METHODS OF WORK OF THE SUB-COMMISSION (continued)

1. The CHAIRPERSON said that requests had been received from several national human rights institutions to participate in Sub-Commission meetings, as they did in those of the Commission on Human Rights. The Bureau recommended that such requests should be accepted and that, on receipt of a written request, such an institution should be allowed to make a short statement on agenda sub-item 12 (a) (i).

2. It was so decided.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES. REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (agenda item 2) (continued) (E/CN.4/Sub.2/2000/4-8, 35, 36, 38 and 39, E/CN.4/Sub.2/2000/NGO/1 and 2, E/CN.4/2000/30)

3. Mr. KAMAROTOS (Médecins du Monde-International) said that his organization, which had been working in Chechnya and Ingushetia since 1995, was well aware that massive violations of human rights continued to occur, in defiance of international humanitarian law and even since the most recent resolution of the Commission on Human Rights. It was particularly concerned about the situation of displaced persons in Ingushetia. Although primary health and mental health care programmes had been established in various camps, roughly a quarter of the displaced population continued to suffer serious psychological problems as a result of the conflict. The Russian authorities' recent decision not to register any further displaced persons in Ingushetia was the more disquieting since access by humanitarian aid institutions depended on such formal registration. As it was, the assistance offered remained inadequate.

4. There was reliable information of continued human rights violations in Chechnya. In particular, attacks by Russian forces, including reprisals for incidents involving booby-trapped vehicles, continued not only to take a large toll of civilians but to cause widespread damage to established health centres. Figures which he read out showed that incidents of arrest and detention, as part of so-called "cleansing" operations, had recently increased, and that detention generally included torture and other cruel, inhuman or degrading treatment. No procedural guarantees were provided, detainees' relatives were rarely informed about the places of detention, and there were allegations that some detainees were released against payment of money. His organization had also received allegations of enforced disappearances. He called for immediate measures to implement Commission resolution 2000/58.

5. Mr. AHDEROM (Baha'i International Community) said he regretted having to draw the Sub-Commission's attention to the discrimination and persecution suffered by the Baha'i community in Egypt. The problems had begun in 1960, with Presidential decree No. 263, aimed

at dissolving all Baha'i institutions, banning the latter's activities and confiscating all Baha'i assets. Despite the assertion that individuals remained free to practice their faith in accordance with the constitutionally guaranteed religious freedom, Baha'is had been imprisoned on six occasions during the past 30 years on charges related solely to their religious convictions. The decree had been challenged in the courts, but the Supreme Court had ruled in March 1975 that it was constitutional. In addition, the Baha'i faith had been declared an unrecognized religion - although it had been recognized by the Government for over half a century. The Supreme Court had also decided that the Baha'i Faith was against public order, although the Baha'i community had existed in Egypt since 1868 without having attracted any such accusation. The purpose of the Government's action seemed to be to pacify a few religious extremists at the expense of a law-abiding community - an abdication of State responsibility to protect the rights of all citizens.

6. In 1993, the Human Rights Committee, in its concluding observations, had voiced its disquiet about restrictive legal provisions in Egypt with regard to freedom of thought, conscience, religion, assembly and association, and its concern that restrictions regarding religious communities such as the Baha'i did not conform to article 18 of the International Covenant on Civil and Political Rights (CCPR/C/79/Add.23). The situation of Baha'is in Egypt had not improved since then, however, and in some ways had deteriorated. One instance was a fatwa, issued in May 1998, seemingly prompted by the intended appointment of a Baha'i lecturer at the University of Cairo - although the lecturer had, in fact, been subsequently appointed. His organization called on the Egyptian Government to address the grave breaches of freedom of religion that the Baha'is continued to suffer.

7. Mr. BRADY (Indian Law Resource Center) said that the United States continued to violate the human rights and fundamental freedoms of the Western Shoshone indigenous people on their ancestral lands in central Nevada and parts of California, Idaho and Utah. Traditional hunting, fishing and grazing rights were being curtailed; access to traditional gathering and spiritual sites was impeded and in some instances denied; mining authorized by the Federal Government was contaminating limited water supplies; and some areas, including a sacred site, faced threats of military testing and nuclear waste storage.

8. The United States authorities were attempting, by means of a discriminatory agency process, to reinterpret the Treaty of Peace and Friendship with the Western Shoshone signed and ratified in 1863 and to deny not only Western Shoshone title and rights to land but also any recourse to formal protest or litigation, offering instead only a meagre monetary recompense that was unacceptable. The aim of current legislation - the Western Shoshone Distribution Bill and the Northern Nevada Land Act, measures which cynically appealed to urban dwellers - was to appropriate traditional land and capitalize on its sale.

9. His organization, having exhausted domestic procedures, appealed to the Sub-Commission to call upon the United States to halt immediately all current or threatened impediments to the Western Shoshone's use and enjoyment of ancestral lands and to open discussions with a view to finding acceptable solutions.

10. Ms. MARWAH (International Institute for Non-Aligned Studies) said that human rights were best secured by suitable constitutional and legal structures, good-quality political leadership, government and education, sound communications and independent media. Nations

showed a certain ambivalence, however, with regard to the elimination of racial discrimination, in that regard, education was failing to make adequate impact. Recent history showed what could happen when one race considered itself superior to another.

11. It was inevitable, in the current world economy, that people from different races would be found working together in most countries, but what ought to be a healthy trend had become a source of tension. Nations once proud of their immigrant background were currently foremost in attempts to restrict the free flow of people, economic fears were being given racial overtones, and newcomers from other cultures were seen as threats to an established and, by implication, superior way of life. But the true remedy required, at the outset, only an acknowledgement by all human rights champions, including members of the Sub-Commission, that they too had at times been guilty of racial prejudice and discrimination.

12. The High Commissioner for Human Rights, addressing the Sub-Commission, had underlined the importance of the preparatory work for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance to be held in 2001, and her Office had initiated some welcome action in that regard. A further contribution to the preparations would be provided by a conference on racism to be held in New Delhi, for which the International Institute had already initiated the work.

13. Mr. PHUNTSOK (Worldview International Foundation) said that since the Sub-Commission's adoption of resolution 1991/10 - the only resolution on Tibet to have been adopted in any United Nations forum since 1965 - the human rights situation there had sadly deteriorated. As the Dalai Lama had said in March 2000, the Chinese authorities' current policies revealed the ugly face of racial and cultural arrogance and a deep sense of political insecurity. Since the visit to Tibet in 1994 of the Special Rapporteur on religious intolerance, those authorities had banned the public display of the Dalai Lama's photograph and had jailed the Panchen Lama at an undisclosed location. As part of an atheist policy, more than 11,000 monks and nuns had been expelled for opposing the "patriotic re-education" campaign.

14. Further examples which he cited included the deaths, as a result of torture, of 69 known Tibetan political prisoners since 1988, when China had ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Special Rapporteur on the subject continued to express concern about the persistent use of torture and degrading methods of punishment in Tibet, and the Committee against Torture had recently voiced its disquiet about allegations in that regard. Despite an announcement in 1999, the Chinese authorities had so far failed to invite the Special Rapporteur for an official mission.

15. According to the Tibetan Centre for Human Rights and Democracy, there were 615 known Tibetan political prisoners in Chinese jails. And by imprisoning the Panchen Lama, China had the distinction of holding the world's youngest political prisoner, an 11-year-old boy.

16. Despite China's claims concerning cultural, religious and educational development in Tibet, there was strong evidence that written Tibetan for postal, transport and other public

purposes was in disuse, thus seriously threatening the continued use of the language. China was continuing its policy of Chinese settlement in Tibet, even using international fund agencies for that purpose, which risked causing serious demographic change.

17. The international community, and especially human rights organs, could not ignore such persistent violations of human rights and fundamental freedoms in Tibet. In that regard several campaigns, including a 49-day European March for Tibet involving several former political prisoners, aimed at supporting Tibetans in their struggle to preserve their religious, cultural and national identity, were in hand.

18. Mr. GRAVES (Interfaith International) said that his organization was appalled by the current situation in the Moluccas area of Indonesia, where the government forces were unable to keep order and Christians and Muslims were apparently massacring one another, the centuries-old peaceful coexistence of the different religious groups there having surprisingly broken down.

19. It seemed, however, from his organization's reliable sources, that mercenaries affiliated to the Indonesian army were promoting a jihad against Moluccan Christians and Muslims who collaborated with them. He wondered whether the region's military rulers were resorting to a political misuse of religion, and seeking to impose order through a mixture of fear and religion. The evidence suggested that the military rulers there were out of control and that many people feared that their lives were at risk, not necessarily from persons of another religion but from those who appeared to be fomenting religious rivalry, namely, the military and some mercenaries, reports of whose atrocities, including rape and extrajudicial executions, recalled events in Bosnia and Kosovo.

20. It should be remembered that a spirit of coexistence among religious groups had prevailed in the Moluccas for many years. With the spread of nationalistic movements everywhere, however, central Governments, were often at a loss to know how to control the situation and, in such cases, the military often gained the upper hand, becoming itself undermined by unscrupulous groups. The troubles stemmed, therefore, not from religion itself but from the fomenting of religious animosity for ulterior purposes.

21. He hoped that the Sub-Commission could raise the matter with the Indonesian Government, with a view to taking the situation in hand in a way consistent with the Moluccan people's legitimate concerns. The situation there was, in fact, in the same category as that of East Timor but, unfortunately, was less well documented and appreciated.

22. Mr. PRAJASTO (Pax Romana), welcoming the Human Development Report 2000, noted that the High Commissioner for Human Rights, in her inaugural address to the Sub-Commission, had mentioned that instances of serious violations of human rights remained a source of deep concern in many countries, such as Indonesia. That country's Minister for Foreign Affairs, briefing the ambassadors in Jakarta on 7 July 2000, had noted that problems in conflict areas like Aceh were caused by grave violations of human rights. The Government had committed itself, as noted at the Sub-Commission's previous session, to bring the perpetrators to justice. Pax Romana deeply regretted that it had not yet done so; in the Beutong case, for example,

Lt Col Sudjono, an important witness, had not been summoned, showing that those holding high rank and allegedly responsible for violations had impunity - the removal of which should be a top priority for Indonesia's democratization and reconciliation process.

23. The Indonesian Government was also urged to alleviate the plight of the thousands, especially women and children, displaced in the areas of conflict by providing security and allowing humanitarian relief organizations to have access to them. It should also proceed to ratify the two International Covenants on Human rights and observe the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which it had ratified.

24. In Malaysia, the right to freedom of assembly had been systematically denied for years. Civil society groups and opposition political parties had decided, nevertheless, to stage a peaceful gathering in support of the deposed Deputy Prime Minister Anwar Ibrahim. The Government and police had threatened action against any demonstrators, however, despite a statement by the newly-formed National Human Rights Commission that the public had a right to peaceful assembly.

25. Mr. MTHOBI (Pax Romana) said that, during the run-up to the recent elections in Zimbabwe, atrocities had been committed with impunity by politically sponsored hooligans, most of them members of the ruling party. The atrocities, reported in the press and investigated by a number of non-governmental organizations (NGOs), had included rape, beatings, physical and psychological torture and intimidation, burning of homes, kidnapping and the murder of up to 30 people, mostly opposition members. The police had been unable to enforce the law. Although sanity had prevailed during the elections, farm invasions and unrest still continued. According to the Agricultural and Plantation Workers' Union, over 8,000 of its members had not resumed work because of continuing harassment by so-called war veterans. The land question remained unresolved, and many perpetrators of the pre-election violence were still at large.

26. Mr. PARAMANANTHAN (International Educational Development, Inc.) said that many countries had remained silent concerning the allegations of grave breaches of the Geneva Convention relative to the Protection of Civilian, Persons in Time of War (Fourth Geneva Convention) and the Additional Protocols to the Geneva Conventions in the war in Sri Lanka for reasons of political or economic self-interest. Investigators under United Nations human rights machinery had, however, reported an alarming number of violations by the Sri Lankan Government's forces. In June 2000, the Chairman of the Committee on International Relations of the United States Congress had written to the Secretary of State of that country about the humanitarian crisis resulting from the Government's embargo on food, medicine and other essential goods to the Tamil people. He attributed the restrictions on media coverage of the war to a desire by the authorities to conceal the scale of civilian casualties from the outside world. That charge had been echoed in July 2000 by two British members of the European Parliament, who had also criticized restrictions on the distribution of essential supplies and drawn attention to the plight of displaced people in and around the conflict area.

27. The Government had failed to consult the Liberation Tigers of Tamil Eelam (LTTE) or any Tamil political party in drawing up the "devolution package" designed to resolve the Tamil question that would shortly be submitted to Parliament. It was a plan to which nobody had agreed but the ruling party.

28. He called on the Sub-Commission to express concern about the plight of the Tamil civilian population, oppressive legislation and the sweeping media ban, to support the initiatives by Norway and other countries, to urge States not to supply weapons or funds for military use to the Government, and to condemn the Government for its failure to include Tamil political and military forces in any meaningful dialogue aimed at resolving the conflict.

29. Mr. WEISSBRODT drew attention to the measures to which Belarus had agreed at the previous session, as reflected in the Chairperson's statement on the situation of human rights in Belarus. He thanked the Government for the progress it had made in complying with the agreement. It had invited the Special Rapporteur on the independence of judges and lawyers to visit the country in June 2000. In his press release, the Special Rapporteur had focused on three areas of concern: the judiciary, the legal profession and the state of legislation. Many of the problems in those areas were due to the disproportionate amount of power held by the executive, which had compromised the integrity of both the judiciary and the legislature. Belarus had also withdrawn its reservation to article 20 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, had taken steps to ensure that international observers would be present to monitor the elections scheduled for October 2000 and had submitted a progress report to the Sub-Commission in June 2000 which would shortly be published.

30. In 1998 and 1999, the Sub-Commission had expressed deep concern at the human rights situation of persons mainly of Nepalese ethnicity who claimed to be refugees from Bhutan and had been living for some years in refugee camps in Nepal. It had called on the Governments concerned to negotiate a peaceful solution consistent with international human rights standards, to take steps to verify the origin and nationality status of persons claiming to be refugees, and to negotiate their voluntary return where appropriate. Unfortunately, although the Governments of Bhutan and Nepal had met to discuss the problem, no constructive agreement had been reached and no real progress made in returning the between 80,000 and 100,000 refugees who had been expelled from Bhutan 10 years previously.

31. He welcomed the steps taken by the Government of Nepal to abolish the practice of bonded labour in that country.

32. While welcoming the dramatic improvements in relations between the Democratic People's Republic of Korea and the Republic of Korea in recent months, he regretted the lack of any significant change in the human rights situation in the former country. Government restrictions on access and information had continued to hamper the gathering of independent and impartial information about the human rights situation, so that the population remained vulnerable to hidden human rights violations. Dramatic food shortages had reportedly killed thousands in the previous five years and forced many people to leave the country illegally.

33. According to reports from human rights organizations, many who tried to cross the border into China had been ill-treated by police officers as they were being returned to the Democratic People's Republic of Korea and risked human rights violations after their return. Forcible repatriation by the Chinese authorities had begun in March 2000 and, according to unconfirmed reports, had affected 5,000 people in that month alone. Asylum-seekers in China were reportedly pursued by the Public Security Service of the Democratic People's Republic

of Korea and could face imprisonment or even the death penalty if returned. The Chinese Government continued to deny access to border areas to the Office of the United Nations High Commissioner for Refugees (UNHCR) and other monitors.

34. Mr. Kim Young Dal, the head of Rescue the North Korean People - Urgent Action Network, an organization that provided direct aid to starving people in the Democratic People's Republic of Korea, had been murdered in Japan. A full and timely investigation of his death was needed.

35. In the Chairperson's statement adopted at the previous session, the Sub-Commission had recognized the positive steps being taken to improve the human rights situation in Indonesia but had expressed concern about continuing reports of extrajudicial executions and ill-treatment and of violence abuses in, for example, Aceh and Ambon. Despite encouraging indications that the new administration would continue with the reform process, the human rights situation remained fragile. In the absence of fundamental institutional and legal reforms, human rights violations continued to go unpunished and perpetrators continued to evade justice.

36. Peru had taken the unprecedented step in 1999 of withdrawing from the jurisdiction of the Inter-American Court of Human Rights. The Court had rejected that step, stating that there was no norm in the American Convention on Human Rights that empowered States parties to withdraw their declaration of acceptance of the compulsory jurisdiction of the Court.

37. Torture persisted as a major concern in Turkey despite some sincere efforts by the Government to curb the practice. Hundreds of cases had been documented by human rights organizations over the years. There was concern at the failure to investigate allegations of torture and at the fact that alleged torturers were often not suspended from their duties while legal proceedings against them were under way and had even in some cases been promoted. The activities of a number of human rights organizations also continued to be hampered in Turkey.

38. He noted that, in accordance with the agreement reached at the previous session between the Sub-Commission and the Government of Togo, an international commission of inquiry had commenced its proceedings.

39. He looked forward to hearing a report from Mrs. Daes on the outcome of what had apparently been a successful visit to Mexico at the Sub-Commission's request.

40. He hoped that the Sub-Commission would remain active with regard to country situations, particularly those which were not being adequately addressed by the Commission on Human Rights, and would find a way to have its discussions meaningfully reflected in its report.

41. Ms. BATHA (World Evangelical Fellowship) said that the French National Assembly had passed a bill in June 2000 which gave the State power to dissolve religious groups and impose heavy sentences and fines on their members. The vagueness of the wording of the bill, which awaited Senate approval, seriously circumscribed freedom of speech, including attempts to persuade others to share a particular point of view. Freedom to share one's beliefs was integral to certain religions and to freedom of belief as protected under international law.

42. In 1996, the French authorities had published a list of 179 groups, including mainstream Christian groups such as the Baptists, which had become a de facto blacklist of "dangerous cults". An interministerial body to combat sects had been established in 1998. There was no mechanism for dialogue with the Government and no procedure for being removed from existing lists.

43. France was bound by international treaties and by its own Constitution to respect religious freedom. Criminal activities under the guise of religious freedom should be prosecuted by existing legislation and law-abiding groups should not be harassed by the use of blacklists and extrajudicial investigations. Two-tier systems of religious classification had been used in many countries to oppress, control and exploit legitimate religious activity. Minority religious groups should therefore be given equal status and treatment.

44. Ms. AVELLA (World Federation of Trade Unions) said that trade union activism had become a high-risk occupation in Colombia. The Colombian teachers' federation FECODE had reported a wave of terrorist activity against teachers throughout the country. Fifteen teachers had been murdered since the beginning of 2000. The President of FECODE and most of its leaders had been threatened. Although the Government had created a number of bodies to protect the teachers, they had so far proved ineffective.

45. The leaders of a nationwide trade union of oil industry workers had been targeted by paramilitary groups. Many had been displaced or forced to emigrate. Unless the authorities took firm action to protect the lives of threatened trade unionists, all union activity in Colombia would cease.

46. Her organization regretted that, at its last session, last session, the International Labour Conference had failed to established a commission of inquiry on Colombia. The United States Government's Colombia Plan, with its strong military component, would provide weapons to an army that was guilty of ongoing human rights violations and was in league with terrorist paramilitary groups. The Plan would not solve the problem of drug trafficking but undermine peace efforts, damage the Amazonian ecosystem, promote further displacement and exacerbate the humanitarian and human rights situation.

47. In response to reports that a military base in Ecuador would be used for United States operations against certain regions of Colombia, there had been calls for a referendum to determine whether the Ecuadorian people would consent to such activities.

48. Her organization called for international assistance in resolving the armed conflict through negotiations and the involvement of Colombian society and the economy in promoting integrated solutions to drug trafficking and in building new democratic institutions.

49. Ms. KABIR (Association pour la Promotion de l'Emploi et du Logement (APEL)) said that individuals such as Osama Bin Laden and the Taliban in Afghanistan had destroyed the land and ethos of the Afghans and ravaged their dignity. They had encouraged groups such as Harkat-Ul-Mujahideen to run military training camps for a jihad. The Taliban threatened to destroy their own society by targeting specific religious and cultural groups. Earnings from the narcotics trade were used to subvert neighbouring societies. They used religion to marginalize

and oppress women, who were prevented from taking part in social, economic and political life. Some women had banded together in the Revolutionary Association of the Women of Afghanistan (RAWA) to struggle for women's rights and democracy and to combat all forms of fundamentalism.

50. Mr. MAQBOOL (World Muslim Congress) said that calls had been made at the fifty-sixth session of the Commission on Human Rights for the establishment of an independent tribunal to investigate charges of violations of the Geneva Conventions by the forces of the Russian Federation in Chechnya. The tribunal had not yet been established but the torture and ill-treatment of Chechen detainees in detention centres such as that of Urus Martan in the vicinity of Grozny continued.

51. Many ethnic Albanians from Kosovo were still detained in Serbian jails. It was the responsibility of the international community to secure their release.

52. The Indian security forces continued to torture and kill innocent civilians in Kashmir. The basic issue was the right of the people of Kashmir to self-determination and India had stationed almost 750,000 soldiers and other security personnel in the area to prevent them from exercising that right. Any Kashmiri who failed to accept that Kashmir was an integral part of India was by definition a "militant". Arbitrary arrests and detentions were a routine result of daily house-to-house searches. Homes were plundered and dynamited and entire villages had been burnt down.

53. Detainees were subjected to torture or simply disappeared. By one count, 58 Kashmiris had been killed in custody in the previous two months. According to an Amnesty International report published in 1999, 800 people in Jammu and Kashmir had disappeared after being arrested by the Indian security forces. Political leaders were illegally detained and denied minimum prison rights. Women were beaten up by the police and raped. All criticism or dissent was stifled.

54. Kashmiri leaders were crying out for help and it was incumbent on the Sub-Commission to take cognizance of the ongoing massive human rights violations in Kashmir.

55. Mr. PROVE (Lutheran World Federation (LWF)), speaking also on behalf of Save the Children Fund and Danchurchaid, drew attention to the statements by the Chairperson at the two previous sessions of the Sub-Commission concerning persons in Nepal claiming to be refugees from Bhutan. His organization and the Bhutanese refugee community had looked forward to the Sub-Commission's review of the situation at the current session, but intervening circumstances had precluded any concrete action. Despite interventions by, among others, the United States Assistant Secretary of State for Population, Refugees and Migration, the Norwegian Minister for Foreign Affairs and the United Nations High Commissioner for Refugees, over 90,000 people continued to languish in the refugee camps of eastern Nepal.

56. Such progress as might have been made though ministerial-level contacts between the two Governments had not led to the establishment of a verification mechanism or to the return of

a single refugee to Bhutan. The negotiations were hampered by disagreement about the social unit on which a verification process should be based and there was no demonstrably shared sense of urgency to overcome those differences.

57. His organization hoped that the Sub-Commission would find the time and means to review the matter and would continue to press for a just solution.

58. Mr. BENNET (Afro-Asian Peoples Solidarity Organization) said that Mr. Qurishi, a long-standing defender of the rights of the Seraiki people - who had addressed the Sub-Commission at previous sessions - had been prevented by the Pakistani military dictatorship from travelling to Geneva.

59. Every attempt was being made in Pakistan to silence and demolish the cultural identity of peoples such as the Seraiki, Mohajirs, Sindhis and Baloch, in some cases through the use of force. Even Muslims belonging to the majority sect of Sunni Islam were treated as pariahs if they were linguistically different from the ruling Punjabi elite. The paranoia of the authorities was such that they had even sought to manipulate the census figures so as to minimize the significance of such groups.

60. Mr. ANDREW (International Commission of Jurists) said that the imposition of the death penalty on minors was both morally and legally inadmissible. Such a penalty not only violated the inherent dignity of the human person and the rehabilitative function of punishment, it was also in clear breach of a number of international and regional human rights instruments. Only five States persisted in maintaining the practice (Iran, Nigeria, Pakistan, Saudi Arabia and the United States). The United States continued to apply the death penalty to minors, even though the Human Rights Committee had declared that the State party's reservation to article 6, paragraph 5 of the International Covenant on Civil and Political Rights was incompatible with its obligations under the Covenant.

61. In 1987, the Inter-American Commission on Human Rights, in the case of Roach and Pinkerton v. the United States, had ruled that the prohibition on imposing the death penalty on minors was an emerging principle of international law. It could hardly be doubted that, 13 years later, the prohibition had come to constitute a principle and peremptory norm of international law.

62. His organization also wished to draw attention to the right of victims of human rights violations and their family members to accurate information, particularly in the context of enforced disappearances. The Government of Argentina should be urged to comply with the agreement it had signed in that connection on 15 November 1999 under the auspices of the Inter-American Commission on Human Rights. Enforced disappearances continued to be investigated in that country by military courts, in breach of the Declaration on the Protection of all Persons from Enforced Disappearance (article 16, second paragraph). Moreover, some military officers were refusing to cooperate with judicial investigations.

63. Mr. LEBLANC (Franciscans International), speaking also on behalf of Dominicans for Justice and Peace, said that, despite the electoral change in Mexico and the new President's stated determination to allow international scrutiny, the country's long-standing and systemic

human rights problems persisted. The High Commissioner for Human Rights on her recent visit to Chiapas had declared that there was a deep gulf between government statements and reports on the ground. The Mexican authorities should be strongly encouraged to implement fully their international commitments, and the Sub-Commission should request the Commission on Human Rights to monitor the follow-up.

64. In Pakistan, the Blasphemy Law and the separate electoral system (which required persons to vote only for candidates of their own religious denomination) were still of concern. It was to be hoped that the planned changes in the electoral system - to be announced on 14 August 2000 - would take account of the demands of the religious minorities and lead to a restoration of the joint electorate system.

65. In Colombia, a massacre had taken place on 8 July 2000 in the village of Union. Men in army uniforms wearing balaclavas had rounded up the community and shot six men, threatening to return and kill more unless the people abandoned their village. The killings appeared to be linked to a policy of land-clearance for purchase at bargain prices by transnational corporations (for oil, fruit farms and mining).

66. Ms. BANDETTINI di POGGIO (International League for the Rights and Liberation of Peoples) drew attention to the escalation of direct attacks against the Tamil civilian population in areas of northern and east Sri Lanka under LTTE control. Civilians were increasingly being used as human shields, and bombing of civilian targets was causing a mass exodus. Five thousand civilians forced to flee the Thenmaradchi division of the Jaffna peninsula were currently being housed in a transit camp where UNHCR and the International Committee of the Red Cross (ICRC) were providing limited emergency relief in difficult conditions.

67. Hospitals and pharmacies in the Vanni region were on the brink of closure due to government restrictions on medical supplies. A hospital in Valaichenai which served nearly 38,000 people from more than 50 villages, was particularly affected.

68. In the Sinnakadai area in Mannar, the incident of rape and sexual abuse of women at the hands of the security forces was on the increase.

69. For the conflict to be resolved, the Tamil national question must be addressed, with LTTE as a party to the negotiations. Both LTTE and the Tamil United Liberation Front (TULF) - a moderate party - considered the proposed devolution package to be unacceptable, since it merely served to promote majoritarian Sinhala interests.

70. The Sub-Commission, for its part, should support the facilitating action undertaken by Norway and welcome further action any interested country might propose, with a view to achieving a just and dignified peace for all.

71. Mr. BHAN (International Institute for Peace (IIP)) said that Kashmiris of different religions had coexisted peacefully for centuries in Jammu and Kashmir. Their tranquillity had been shattered in 1989 when "a handful of boys", dissatisfied with the political system and poor

governance, had been beguiled by Pakistan into firing the first shots. Those shots continued to echo in the deaths of thousands, in the destruction of an entire economic and social infrastructure and in refugee camps milling with both Hindus and Muslims.

72. It was with Pakistan that the onus for all the death and destruction lay. The jihad groups it had nurtured continued to usurp peace with their perverted ideologies and to deny Kashmiris the right to self-determination. Kashmiri brethren in the northern areas of Pakistan had waited 50 years for a recognition of their rights, yet they continued to be ruled from Islamabad, their voices silenced and their land used as a launch pad for attacks against India. In Azad Kashmir, people were not even free to stand for election or to hold public office without first pledging support for Jammu and Kashmir's accession to Pakistan.

73. The Government of Pakistan claimed it was providing political, moral and diplomatic support to Kashmir, but the Kashmiris did not want it. Pakistan should support the people of Sindh, the Mohajirs and the Baluch and others who were clamouring for their rights. All Kashmiris wanted was peace, and for Islamabad to leave them alone.

74. Mr. REHMAN (World Federation of Democratic Youth) said that gruesome human rights violations against more than 22 million Mohajirs in urban centres of the Sindh province of southern Pakistan persisted, as it had done under previous regimes. The Sub-Commission should thus take urgent action in accordance with Commission resolution 8 (XXIII).

75. The military take-over in Pakistan had made no difference to the policy of oppression and suppression of the Mohajirs. Thousands continued to languish in prison, including several parliamentarians, one of them being the former Mayor of Karachi. Thousands of families had been forcibly displaced and there had been over 28 reported cases of involuntary disappearances. More than 53 members of the Muttahida Qaumi Movement had also been sentenced to death by the unconstitutional Anti-Terrorist Courts (ATC).

76. His organization called upon the Government of Pakistan to cease all violations of human rights and fundamental freedoms committed against the various ethnic and linguistic groups in the country, and particularly the Mohajir and Sindhi peoples of the province of Sindh.

77. Ms. TANGGAHMA (Survival International) said that, at the recent Papuan Congress, some 3,000 leaders from all regions of West Papua had reaffirmed their people's right to self-determination and had called, inter alia, for a review of the 1969 United Nations-sponsored handover to Indonesia.

78. The Indonesian Government and army perceived such aspirations on the part of the Papuan people as a threat. Freedom of speech was not allowed, and the Papuan leaders were constantly subject to police interrogations. Alarmingly, the number of Indonesian troops in the area had increased from 8,000 to 12,000 in recent months, thereby exacerbating the situation.

79. There was a pro-independence militia, estimated to number 7,000, and an anti-independence militia with between 5,000 and 10,000 - mainly non-Papuan - members. Brutal confrontations between the opposing camps had already occurred in Jayapura and Fakfak.

80. The bloody sectarian conflict in neighbouring Malukku had also had repercussions in West Papua, where at least 20,000 Moluccans had sought refuge. Locals feared that the refugees might bring further violence. The Institute for Human Rights Studies and Advocacy - a human rights organization in West Papua - considered that special steps should be taken to cope with the sudden influx, such as UNHCR support, and that international intervention was needed to resolve the crisis.

81. The Sub-Commission should continue to monitor closely the various country situations, particularly those in parts of the world, such as West Papua, which did not enjoy broad media coverage. It should also call upon the Government of Indonesia to allow international intervention in eastern Indonesia, particularly of a humanitarian nature, to bring to justice persons accused of provoking violence and to suspend members of the security forces suspected of siding with the militias. In addition, it should also consider ways in which the international community might help restore calm in the region, by supplying international observers, for instance.

82. Mr. NAQSHBANDI (World Muslim League) said that the people of Jammu and Kashmir looked to the Sub-Commission to raise its voice against continued violations of their human rights at the hands of the Indian authorities. The Government of India used euphemistic language to camouflage its crimes, terming its terrifying occupation forces - "security forces", acts of arbitrary arrest and detention - "preventive detention", acute harassment and raids of communities - "house-to-house searches", and torture and systematic killings of civilians - "encounters".

83. A series of "black laws" on Kashmir facilitated such abuses and were in violation of international law. Under such legislation, detention without charge or trial was allowed for up to one year; identities of witnesses could be kept secret; the burden of proof was placed on the accused; and extrajudicial confessions to police officers were permitted. Moreover, members of the armed forces could kill persons at their discretion; enter and search any premises, or arrest any person without warrant and at any time.

84. To make matters worse, members of the armed forces were immune from prosecution. Such provisions freed the Indian armed forces from any accountability for human rights abuses and resulted in the terrorization of the entire Kashmiri population.

85. Ms. HAMPSON said that the global human rights picture for the previous 12 months was extremely varied. There were encouraging signs in some places, such as the recent attempts to resolve the problems in Kashmir and Corsica, but in other places the picture was depressing.

86. Since the Sub-Commission's previous session, six individuals had been executed for offences committed when they were under the age of 18: one in the Democratic Republic of Congo and one in the Islamic Republic of Iran - in clear violation of the Convention on the Rights of the Child, of which both countries were signatories - and four in the United States of America. Although the United States had not ratified the Convention on the Rights of the Child, it could be argued that the executions there were a violation of customary international law.

87. Certain countries had been the focus of international concern, and thus of concern to the Sub-Commission and its members for some time. However, it should be acknowledged that the Democratic People's Republic of Korea had submitted a report to the Human Rights Committee earlier in the year, and it was to be hoped that the political developments in the Korean Peninsular would lead to an improvement in the human rights situation there. In a number of countries, there was evidence that fighting had been conducted in violation of the applicable laws of armed conflict and in violation of the rules of human rights law prohibiting arbitrary killings, inhuman treatment, torture and arbitrary detention.

88. Other situations that gave rise to serious concern were those in which one community persecuted another, sometimes with the help of the State or in the absence of effective preventive action by the authorities. The international community had a special responsibility for the situations in Kosovo and Bosnia and Herzegovina, having ignored the discrimination practised by the ethnic Serb authorities for a decade. The reaction of the ethnic Albanians in Kosovo was deplorable, though not perhaps surprising, and the international community's first obligation was to provide effective protection to the ethnic Serbs there.

89. One thing all those situations had in common was the impunity, or probable impunity, of the perpetrators. For example, the 1999 peace agreement in Sierra Leone, which included a blanket amnesty, could not bind third States whose courts recognized universal permissive jurisdiction with regard to war crimes, nor should it apply to serious violations committed after the agreement was signed. Impunity was also rife in Turkey, where the European Commission of Human Rights routinely encountered failings in the investigatory process and where the legal system failed adequately to protect the right to life when the threat came from State security forces. In Kosovo, there were likely to be difficulties in getting both suspects and witnesses to appear before the war crimes tribunal. All those situations emphasized the importance of the prompt establishment of the International Criminal Court.

90. On the positive side, the majority of States cooperated with United Nations human rights treaty bodies and thematic mechanisms. She welcomed the fixing of the date for the visit of the Working Group on Arbitrary Detention to Bahrain, Saudi Arabia's willingness to receive a visit from the Special Rapporteur on the independence of judges and lawyers, and the planned ratification by Indonesia of the two International Covenants on Human Rights.

91. The purpose of the United Nations human rights mechanisms was to help identify problems and possible solutions. However, States cooperating with those mechanisms still sometimes had problems with the effective accountability of the police and security forces, the performance of public prosecutors and a weak judiciary. International assistance needed to be forthcoming to help identify the causes of such problems; otherwise, both the apparent cooperation of States and the professed concern of certain Governments would be revealed as a sham. Effective domestic remedies made widespread and systematic violations most unlikely, and the provision in practice of such remedies was a suitable topic for the Sub-Commission's sessional working group on the administration of justice.

92. As noted by the open-ended working group on enhancing the effectiveness of the mechanisms of the Commission on Human Rights, the refusal of a minority of Governments to

cooperate with the United Nations human rights mechanisms was a cause of serious concern. The lesson of the past decade was that unaddressed serious human rights violations often led eventually to an explosion. It was therefore necessary to find a way of "engaging" uncooperative States in the interest of peace and security. Certain countries showing signs of increasing engagement should be encouraged to ratify human rights treaties, and the Sub-Commission should adopt a resolution under its agenda item 2, even though it must refrain from referring to specific countries by name.

93. Mr. NAZARIAN (Observer for Armenia) said that some human rights violations, of which there was an increasing number, appeared to be of a permanent nature. The constant attempts to deny the rights enshrined in international treaties, particularly the ongoing violation of people's right to self-determination, deserved the Sub-Commission's undivided attention. The use of military force to deny people the exercise of that right and the right to forge their own national destiny led to armed conflict and refugee problems. For more than a decade, his country had suffered the consequences of the refusal by Azerbaijan to fulfil its obligations under international human rights treaties and to respect the right of the people of Nagorno Karabakh to self-determination. In the early 1990s, following the constitutional demand of the people of Nagorno Karabakh to exercise in full their civil, political, economic and social rights, Armenian minorities in Azerbaijan had been the victims of gross and massive violations of human rights and fundamental freedoms. They had been forced to flee for their lives from organized pogroms and riots followed by looting and arbitrary confiscation of property ...

94. Mr. ALFONSO MARTÍNEZ, speaking on a point of order, said that every year the Sub-Commission urged the representatives of Governments not to refer to human rights violations in other States; in that way, statements equivalent to a right of reply could be avoided at a later stage.

95. Mr. NAZARIAN (Observer for Armenia) said that the Sub-Commission should give priority to the right of peoples to self-determination, since no individual rights could be fully guaranteed if that was not observed. For example, the right of peoples freely to determine their political status and pursue their economic, social and cultural development implied the full realization of their right to self-determination. The application of the right to self-determination was being undermined by assertions that it could be applied only once, that its enjoyment was restricted to a national territory and that it was subordinate to the principle of the territorial integrity of States. He trusted that the Sub-Commission's experts would monitor closely the application of the principles of international law and the massive violations of human rights and fundamental freedoms that resulted when they were not observed.

96. Mr. AL-DOURI (Observer for Iraq) said he deplored the attempts made to exploit the human rights problems facing many countries for political advantage at the international level. Such attempts were evidence of double standards and a lack of transparency, and he trusted the Sub-Commission would successfully distance itself from them. Economic, social and cultural rights could not be respected in a situation of deprivation such as the one imposed on the people

of Iraq by the 10-year-old embargo, which served as a means of applying collective torture and committing genocide. While the States behind the embargo would not go into human rights problems in their own countries, an entire people was being deprived of the right to health and life. The embargo was a heinous crime, with repercussions that would affect generations to come, and the Sub-Commission should make the alleviation of the plight of the Iraqi people a priority.

97. He called on the Sub-Commission to be even-handed on human rights issues, and to denounce the daily bombing of Iraqi citizens by the air forces of the United States of America and the United Kingdom. Those two countries were clearly interfering in the internal affairs of Iraq; they used their veto to prevent the export of medicines and food, withheld financial resources from Iraq and prevented Iraqi citizens from travelling freely. They stressed the need to respect human rights while at the same time calling for the overthrow of a regime. He urged the Sub-Commission to adopt a resolution calling for the lifting of all forms of embargo throughout the world.

98. Mr. VAHABZADA (Observer for Azerbaijan) said that the crime of aggression was recognized in the Rome Statute of the International Criminal Court as one of the most serious crimes of concern to the international community and the General Assembly, in its resolution 3314 (XXIX), on the definition of aggression, had made it clear that the territory of a State must not be the object of military occupation or of acquisition by another State as a result of the use of force. Unfortunately, however, such developments in the norms of international law were not an obstacle to their violation. He drew particular attention to the situations in territories which had been seized by one of the parties to a conflict even after the adoption of resolutions by the Security Council condemning the occupation and calling for strict respect for the sovereignty, territorial integrity and inviolability of the internationally recognized borders of the State concerned.

99. Situations in which Governments refused to recognize their responsibility for the consequences of their direct or indirect involvement in an armed conflict were also a matter for serious concern. Such Governments often refused to recognize the internationalized nature of the conflict, falsely claiming that it was the result of an ethnic group's struggle for self-determination.

100. Organized international terrorism had become one of the most serious threats to the generally accepted concept of human rights and fundamental freedoms, as well as to the security and territorial integrity of States. International cooperation needed to be strengthened. It was important to develop a comprehensive international legal framework to combat international terrorism as a crime against humanity. The Special Rapporteur on terrorism and human rights should pay more attention in her future reports to the phenomenon of so-called "ethnic terrorism".

101. Lastly, he drew attention to the sometimes destructive role of a diaspora in propagating a so-called "collective memory of the people" based on a false interpretation of historical events.

In some cases, the country of origin could become politically and financially dependent on the diaspora, making peace and good relations between neighbouring States difficult and negatively affecting the welfare of entire nations.

102. Mr. GOLOVANOV (Observer for Belarus) said that, since the Sub-Commission's last session, the Special Rapporteur on the independence of judges and lawyers had visited his country, where he had been given all necessary assistance and where he had enjoyed total freedom of movement. He had been given the opportunity to meet, among others, representatives of NGOs and opposition politicians.

103. In July 2000, the internal procedures had been completed to enable Belarus to withdraw its reservations to article 20 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

104. Parliamentary elections were to be held in October 2000 and presidential elections in 2001. His Government had worked closely with the Council of Europe to prepare a new electoral code which would ensure that those elections were free and fair. The draft electoral code it had submitted for comments to the Council of Europe had been adjudged entirely suitable. The new Electoral Code took account of the views of political parties at all parts of the political spectrum, including those not represented in Parliament, as well as international organizations and representatives of civil society.

105. The intensive work on the Electoral Code had left no time to consider legislation on human rights, although a draft had already been prepared after consultation with all interested parties and had been approved by the country's Human Rights Commission. The creation of the post of Ombudsman was still on the agenda and would be dealt with soon after the new Parliament got down to work.

106. The Government was planning further measures to bring its legislation into line with international legal standards and was studying a draft programme of action to ensure the effective protection of human rights and freedoms during the transitional period. Moreover, it had submitted, as requested, a report on the implementation of its obligations in the field of human rights in time for distribution at the Sub-Commission's current session (E/CN.4/Sub.2/2000/9).

107. Mr. RAJA NUSHIRWAN (Observer for Malaysia), making a statement equivalent to a right of reply, said that the allegation by an NGO that the right to freedom of assembly had been systemically violated for years in his country was manifestly untrue. Permits for rallies had been granted and the authorities had stepped in only when demonstrations had disrupted public order. Such actions were consistent with the provisions of the Universal Declaration of Human Rights with respect to the preservation of public order and morality. He was surprised at the allegations that his Government justified the alleged violation of that right with legal arguments. Like other Governments in democracies based on the rule of law, his Government did not justify actions based on legal arguments, but rather made decisions based on legal reasons.

108. Mr. KIM Yong-ho (Observer for the Democratic People's Republic of Korea), making a statement equivalent to a right of reply, said that Mr. Weissbrodt's allegations about the human

rights situation in his country were completely unsubstantiated. Human beings were held in the highest respect in his country, and everything possible was done to improve their lives. Groundless accusations only led to confrontation and did not help the cause of human rights. His delegation had reacted to similar accusations in the past by showing the utmost spirit of cooperation and by patiently offering the facts on the situation in its country. Unfortunately, Mr. Weissbrodt had reacted to that cooperation by making accusations based on distorted and fabricated information. He therefore advised Mr. Weissbrodt to be objective and impartial, as befitted an expert member of the Sub-Commission.

The meeting rose at 5.50 p.m.

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SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-second session

SUMMARY RECORD OF THE 5th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 3 August 2000, at 10 a.m.

Chairperson: Ms. MOTOC

CONTENTS

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (continued)

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GE.00-14609 (E)

The meeting was called to order at 10.05 a.m.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (agenda item 2) (continued) (E/CN.4/Sub.2/2000/4, E/CN.4/Sub.2/2000/5, E/CN.4/Sub.2/2000/6, E/CN.4/Sub.2/2000/7, E/CN.4/Sub.2/2000/8, E/CN.4/Sub.2/2000/35, E/CN.4/Sub.2/2000/36, E/CN.4/Sub.2/2000/38, E/CN.4/Sub.2/2000/39, E/CN.4/Sub.2/2000/NGO/1, E/CN.4/Sub.2/2000/NGO/2, E/CN.4/Sub.2/2000/30)

1. Mr. MENGA (Observer for the Republic of the Congo) said that, with the end of the civil conflicts, the socio-political situation in the Republic of the Congo had taken a positive turn, which was reflected in improved living conditions for the population and greater respect for human rights. In the socio-economic area, a programme approved by the international financial organizations had just been adopted for the period 2000-2002. Its objective was to improve the living conditions of the population, especially the most disadvantaged, and to create jobs. Life was returning to normal. The press was free once again, more young people were being reincorporated in econ. mic activity and reforms had been undertaken in the field of justice.

2. Thanks to sustained cooperation with the international organizations in the field of human rights, it had been possible to submit reports and to complete various missions, including a recent visit by the High Commissioner for Human Rights to Brazzaville.

3. The efforts made by the Congolese authorities following a deadly and destructive conflict deserved encouragement by the international community. It had to be pointed out in that respect that the amount of humanitarian assistance supplied to the Congo during the conflict had been insignificant.

4. Mr. ALEMU (Observer for Ethiopia) began by drawing attention to the fact that Ethiopia and Eritrea had signed a cessation of hostilities agreement on 18 June 2000, which had not, however, prevented an alarming deterioration in the situation of Ethiopian nationals in Eritrea. The Eritrean regime had been using the media to intensify nationalistic feeling and to exacerbate intolerance against Ethiopian nationals.

5. The CHAIRPERSON, speaking on a point of order, reminded the observer for Ethiopia that it had been decided that Government observers should not mention human rights violations committed in countries other than their own.

6. Mr. PINHEIRO endorsed the point made by the Chairperson.

7. Mr. ALFONSO MARTÍNEZ, speaking on a point of order, said that, while it was the Sub-Commission's tradition to avoid discussions between delegations holding different views and using human rights to settle bilateral problems, the concern expressed by the Ethiopian delegation for Ethiopian nationals in Eritrea was legitimate and seemed to lie outside the scope

of the rule referred to by the Chairperson. That having been said, it was indeed important to avoid unnecessary discussions, which was why comments such as that made by the observer for Ethiopia should be as brief as possible.

8. Mr. EIDE said that the observer for Ethiopia ought to make his comments before the Commission and not the Sub-Commission.

9. Mr. de ICAZA (Observer for Mexico), referring to the presidential elections recently held in his country and to the preceding campaign, said that they had taken place in a climate of complete freedom and impartiality. For the first time in 71 years, the candidate of an opposition party had been elected to the presidency of the Republic, which reflected the Mexican people's will to strengthen democracy and the rule of law.

10. In the field of human rights, an initial report on the implementation of the national programme for the promotion and strengthening of human rights had been submitted in January 2000. That report gave an account of the progress achieved in the area of human rights education. Furthermore, 11 Mexican States had instituted human rights commissions, which were fully independent, like the National Human Rights Commission.

11. Mexico was a party to 58 international instruments and regularly submitted reports to the treaty bodies. Moreover, the Mexican Government had fulfilled three commitments it had undertaken the previous year before the Sub-Commission. It had invited the High Commissioner for Human Rights, who had visited Mexico in November 1999. On that occasion, a memorandum of agreement had been signed concerning a programme of technical cooperation. A visit by the Special Rapporteur on violence against women was expected shortly, and the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the human rights of migrants had also been invited to visit the country.

12. Mr. MURIC (Observer for Turkey) recalled the statement made before the Commission on Human Rights, at its fifty-sixth session, by the Minister of State in Charge of Human Rights of Turkey, in which the latter had given a detailed account of his Government's measures to overcome certain shortcomings in the field of human rights. Under a new law, adopted on 5 December 1999, officials could be charged before a court of law. In 1999 alone, the courts had dealt with 100 or so cases of torture and ill-treatment blamed on law enforcement officials. Many of the latter had been prosecuted.

13. The number of persons displaced in Turkey due to anti-terrorist measures had never been as high as 3 million, as alleged. Even at the worst of the conflict, it had never exceeded 360,000. Only 800 villages had been evacuated. Sixty per cent of the villages had been abandoned voluntarily, often under pressure from the PKK. Only in 5 per cent of the cases had the Turkish authorities intervened to evacuate the inhabitants for reasons of security.

14. The Government had recently set up a programme to encourage those people to return to their villages, on the understanding that the return had to be of their own free will, that some villages would not be reinhabited and that new villages would not require extra security measures. Priority would be given to developing economic, social and cultural activities. Aid would also be provided for reconstruction.

15. The Turkish Government cooperated with all international bodies dealing with human rights and it appreciated their constructive criticism. It had invited the Representative of the Secretary-General on internally displaced persons to go to Turkey so that he could see that the return home of villagers was taking place under satisfactory conditions.

16. Mr. HUSSAIN (Observer for Pakistan) said that the political change that had taken place in Pakistan in October 1999 had been particularly well received because it favoured democracy. Human rights and fundamental freedoms were a central focus of the Government and the year 2000 had been designated as the Year of Human Rights and Human Dignity. A Commission on the Status of Women had also been established to ensure the well-being and interests of women.

17. The new Government intended to uphold the main elements of the Constitution, such as the independence of the judiciary, federalism and a parliamentary form of government blended with Islamic principles.

18. Unfortunately, the human rights situation in the territory of Jammu and Kashmir occupied by India was deplorable, jeopardizing peace and stability in south Asia.

19. Mr. EIDE, speaking on a point of order, recommended that the observer for Pakistan abstain from commenting on a situation in a country other than his own.

20. Mr. PINHEIRO asked the Chairperson to remind Government observers that they should abide by the resolution adopted the previous year.

21. Mr. HUSSAIN (Observer for Pakistan) reiterated that the situation in Kashmir was very serious. The Kashmiri people had a right to self-determination. But India continued to enforce its policy of repression without regard for the resolutions of the United Nations Security Council. As was clear from the resolutions, the question of Kashmir had not been decided. A solution therefore had to be found to the conflict. Since Pakistan was one of the parties to the dispute, it was not an internal matter for India.

22. The CHAIRPERSON recalled that it had been decided that Government observers should not refer to human rights violations in countries other than their own.

23. Mr. GUISSÉ inquired what exactly was meant by "countries other than their own" in the case of human rights violations. Expressing concern for one's own nationals in another State was not the same as commenting on the situation of another country.

24. Ms. HAMPSON thought there was no ambiguity. If one spoke of violations in one's own country, one meant violations committed by the authorities of one's own country. Conversely, violations attributed to another country were violations committed by the authorities of that other country.

25. Mr. HUSSAIN (Observer for Pakistan) said that a map published by the United Nations showed that the borders of Jammu and Kashmir had not yet been definitively established. There was therefore nothing to prevent him from referring to the deplorable human rights situation in Jammu and Kashmir.

26. Mr. EIDE said that in the case in hand only the existing frontiers of Pakistan could be taken into account.

27. Mr. ALFONSO MARTÍNEZ considered that the Sub-Commission had no interest in preventing an observer from expressing views. A degree of flexibility was required.

28. Mr. YIMER, supported by Mr. PINHEIRO and Mr. JOINET, said that consistency was called for. If the Commission had decided that no Government observer could refer to the human rights situation in a country other than his own, then that decision should be strictly observed.

29. Ms. WARZAZI said that when the Sub-Commission had decided that no reference should be made to the human rights situation in another country, it had not taken account of nationals living in another country. Perhaps the Sub-Commission could discuss the matter and decide whether to maintain its decision or to amend it.

30. Mr. GUISSÉ, supported by Mr. ALFONSO MARTÍNEZ, pointed out that it was the first time that the Sub-Commission had taken such a step. Without going back on its own decision, it could authorize a measure of flexibility to enable observers to express their views. Too strict an application of the rules could be upsetting.

31. Mr. YOKOTA said he would like to provide further information concerning the murder of Kim Young Dal in Osaka, which had been mentioned at the previous meeting by Mr. Weissbrodt. He had read soon afterwards in a newspaper that a suspect had been arrested, whereupon he had obtained information from the Japanese Mission. The suspect was a woman who had shared the victim's room for some years. The suspect had been charged on 23 June and would be summoned before long to appear before the court. An inquiry had therefore been opened into the crime, the exact circumstances of which were still not known. With regard to cases of disappearance which had occurred in the past, the involvement of the Democratic Republic of Korea had sometimes given rise to suspicion.

32. Mr. WEISSBRODT warmly thanked Mr. Yokota for providing that additional information just when it was needed.

33. Mr. TEKLE (Observer for Eritrea) said that he would confine his remarks to denouncing violations committed on Eritrean territory. Those violations had reached a senseless level of cruelty since the occupation of Eritrean territory in May 2000. Even after the signing of the cessation of hostilities agreement, the invading forces had launched attacks on civilian targets. People had been tortured and imprisoned, young girls and elderly women had been raped, and installations essential to the population, such as water and electricity supply systems and even hospitals, had been destroyed.

34. Mr. PINHEIRO, supported by Mrs. WARZAZI, raised a point of order. It appeared from the text that had been distributed that the statement by the observer for Eritrea was of a type that the Sub-Commission had decided at its previous session no longer to accept. The Eritrean delegation should not benefit from more favourable treatment than other delegations that had been interrupted.

35. Mr. FAN asked to see the written text of the guideline referred to by the members of the Sub-Commission.

36. The CHAIRPERSON specified that the decision referred to was decision 1999/114 contained in the report of the previous session (document E/CN.4/2000/2).

37. Mr. TEKLE (Observer for Eritrea) said that he had amended the text of his statement to delete any reference to a country. All the violations he had listed had been committed in Eritrea itself and some of them had been filmed. The video recording which had been distributed to the experts on the previous day was available to all interested persons. The acts of violence concerned were known not only to international civil society but also to senior officials of the United Nations system.

38. Mr. WEISSBRODT, speaking on a point of order, said he regretted that, although the observer had refrained from mentioning the name of a country, it was obvious which one he was referring to since the members had the written text before them and the changes made by the speaker were minimal. The events described were precisely of the kind that the Sub-Commission was requesting observers to exclude from their statements.

39. He drew Mr. Fan's attention to the fact that the decision of the Sub-Commission was contained in Rule 43 of the Guidelines annexed to the report of the previous session (p.99 of the English version), under the heading "Statements on 'human rights situations'". He read out the relevant passage.

40. Mr. TEKLE (Observer for Eritrea) stated that he was speaking only of the situation of Eritreans in Eritrea. Was he being given to understand that he did not have the right to denounce violations committed on Eritrean territory if the perpetrators of those violations were foreigners and that he could do so only if the perpetrators were Eritreans?

41. Mr. YIMER, pointing out that at the previous session no observers had been interrupted during their statements, proposed allowing both the observer for Ethiopia and the observer for Eritrea to speak.

42. Mr. GUISSÉ said that the Sub-Commission could avoid such deadlock situations by displaying flexibility. The observers should not be constantly interrupted under a rule of whose existence they had just learned. Moreover, Mr. Weissbrodt was carrying his interpretation of the rule to excess, since the speaker had not mentioned any country and had specified that the Eritreans whose rights had been violated were in Eritrea.

43. Mr. PINHEIRO, supported by Mrs. WARZAZI, expressed the view that once a rule existed it should be applied to everyone without distinction. If the rule needed to be made more flexible, that was something the Sub-Commission would have to discuss, but for the present the rule should be applied just as it stood to all delegations without exception.

44. Mr. WEISSBRODT said that the Sub-Commission was a body of experts mandated to use their skills to study certain topics, unlike the Commission on Human Rights which was a body made up of government representatives. It was to that body that the representative of

Eritrea should make his statement, not to the Sub-Commission. That fundamental difference was the reason behind the guideline contained in decision 1999/114, which was intended precisely to avoid the type of discussion to which the solution proposed by Mr. Yimer would lead. He therefore rejected that proposal.

45. Mr. PREWARE said that the guideline did not allow any margin of flexibility. Moreover, to ask the Chairperson to apply it with flexibility would place her in an extremely delicate position, since the question of the criteria for making exceptions to the rule would arise in each case. He therefore suggested to the Chairperson that she apply the rule strictly in order to save time.

46. The CHAIRPERSON said she took it that the members were in agreement on the need to apply decision 1999/114 in a rigorous and impartial manner. Consequently, if the observer for Eritrea was unable to abide by the guideline of the Sub-Commission she would give the floor to the following speaker.

47. Mr. KESANG (Observer for Bhutan) said that the Sub-Commission at its previous session had adopted a Chairperson's statement on persons in Nepal claiming to be refugees from Bhutan; in that statement the Sub-Commission urged the Governments of Bhutan and Nepal to take specific measures to reach a rapid settlement of the problem. Mr. Kesang informed the Sub-Commission that the two Governments had met on a number of occasions since August 1999, which had led to progress in the negotiations. They were committed to continuing the dialogue and to following up the process initiated at a meeting of the Joint Ministerial Committee held in Nepal in September 1999.

48. In April 2000 the High Commissioner for Refugees, Mrs. Ogata, had visited Bhutan at the invitation of the Government. The Government of Bhutan welcomed the fact that the Office of the High Commissioner for Refugees had provided the two Governments concerned with a database to facilitate the verification of the people living in the camps.

49. At the latest meeting of the Joint Ministerial Committee held in Bhutan in May, virtually all the differences concerning the verification procedure had been settled. The two parties were remaining in close contact in order to resolve the one outstanding question.

50. Mr. JOINET, referring to situations of human rights violations on which the Commission on Human Rights had not adopted any resolution, said that the situation in Kyrgyzstan was worrying with regard both to the fate of human rights defenders and to the operation of democracy. He quoted the case of Mr. Dyryldaev, Vice-Chairman of the Human Rights Committee of Kyrgyzstan, a warrant for whose arrest had been issued while he was preparing to travel to Geneva on the occasion of the submission of his country's periodic report to the Human Rights Committee. That body had requested the Government not to arrest him on his return and for the time being he was still in exile. Preventive measures needed to be taken to ensure his protection. At the latest parliamentary elections certain political parties had been excluded from the electoral process, which was also worrying.

51. Although the situation in Tunisia was still causing concern, he welcomed the freeing in September 1999 of Mr. Ksila, Vice-Chairman of the Tunisian League of Human Rights, and the invitation from the Tunisian Government to the Special Rapporteur on freedom of opinion and expression. A decision by a State to invite a rapporteur was an extremely positive sign, even if the rapporteur's report contained criticisms, because it indicated that there was agreement within the Government. In the event, the Special Rapporteur had been completely free to fulfil his mandate and had observed that a large number of people, including human rights defenders, political opponents, trade unionists, lawyers and journalists, were being severely persecuted. It would be interesting to know what response had been forthcoming to the recommendations of the Special Rapporteur and to the conclusions of the Committee against Torture which, in its consideration of the periodic report of Tunisia, had noted the widespread practice of torture in that country.

52. He expressed concern at the situation in Zimbabwe, which was not simply a confrontation between formerly colonized people and former colonizers but was characterized by fratricidal conflicts, since some agricultural workers had opposed the occupation of land and had been obliged to flee to escape persecution or even execution. As to Europe, he noted with concern that a party of the extreme right disseminating xenophobic ideas had entered the Government in Austria. In Spain, the Basque separatist movement ETA, had murdered seven people in eight months including a colonel, parliamentarians and a journalist, in other words, the very type of people that dictatorships sought to eliminate.

53. With regard to the monitoring of situations mentioned by the Sub-Commission at its previous session, he welcomed the fact that the Algerian Government had invited four non-governmental organizations (NGOs) to visit Algeria. Similarly, the fact that the Working Group on Arbitrary Detention had been invited to visit Bahrain in 2001 and the fact that Bahrain had withdrawn its reservations to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment were encouraging signs. Belarus had withdrawn its reservations to article 20 of that Convention, had received a visit from the Special Rapporteur on the independence of judges and lawyers and was to be visited by the Working Group on Arbitrary Detention in 2001.

54. With regard to the sentencing to death of minors, it was noted that some political leaders in the United States of America were beginning to share the concerns of the Sub-Commission on that matter and that a shift in opinion was taking place. That development showed that the resolutions of the Sub-Commission could produce positive effects.

55. He noted with satisfaction that the Democratic People's Republic of Korea had resumed dialogue with the Republic of Korea and the international institutions and had submitted its report to the Human Rights Committee. The Sub-Commission might suggest to the Commission on Human Rights that it recommend that country to invite a Special Rapporteur.

56. He had been sent on mission to Indonesia to assess what was involved in the re-establishment of the judicial system and had found that it would be necessary to reconstruct the entire system. He had been disappointed to learn that President Suharto was only being prosecuted for corruption and not for the violation of human rights.

57. He welcomed the election of President Fox in Mexico, as he believed that alternation was the cornerstone of democracy. The Sub-Commission would have to be vigilant and verify whether the new President kept his electoral promises.

58. He noted with great satisfaction the creation of the International Commission of Inquiry for Togo, which included one of the members of the Sub-Commission, Mr. Pinheiro. That showed once again that the resolutions of the Sub-Commission could advance the cause of human rights.

59. He recalled that the fight against impunity had been one of the central themes of the Vienna Conference. The fact that it was the Chilean courts that were now investigating the Pinochet case gave cause for satisfaction. When a criminal was brought before the courts of his country of origin, that was a sign of the re-establishment of the rule of law. He felt it was important to appeal to judges to take the initiative of prosecuting other dictators, since very often such an initiative encouraged Governments to follow their example.

60. With regard to the human rights defenders, he pointed out that the Sub-Commission now had a new partner on that issue, namely the special representative of the Secretary-General to report on the situation of human rights defenders. The Sub-Commission could establish links with him and assist him in his work by informing him of cases, as it already did with the High Commissioner. The Rapporteur could provide information on the monitoring of those cases at each session of the Sub-Commission.

61. Mr. KARTASHKIN pointed out that, according to the guidelines on the application of the rules of procedure, during the consideration of human rights situations it should normally be the members of the Sub-Commission who took the floor last.

62. The CHAIRPERSON stated that, according to the rules of procedure, the experts could speak at any time.

63. Mrs. WARZAZI welcomed the fact that Mr. Joinet had spoken of the human rights situation in European countries, particularly Austria. It was her understanding that a party of the extreme right had entered the Government in that country following completely legitimate democratic elections. The problem was that extremists often used democracy to gain power and, once in power, they abolished democracy.

64. Mr. KARTASHKIN commented that during the discussions on agenda item 2 the majority of speakers had adopted a balanced, objective and impartial approach. Unfortunately, that had not always been the case, particularly with regard to Chechnya. Since he had had the opportunity to visit that Republic on several occasions, he wished to bring to the attention of the members of the Sub-Commission some of the information he had gathered during his discussions with Chechens. They had told him that the situation had worsened considerably after the arrival of Bassaev: all the schools had been closed, gas and electricity supplies had been cut off and looting had become commonplace.

65. According to those Chechens, the situation had changed radically once order had been restored: the population had been supplied once again with gas and electricity and the educational establishments, particularly establishments of higher education, had reopened. The situation in Chechnya had, therefore, changed radically since the previous session of the Sub-Commission, as had also been pointed out by representatives of the United Nations, the Organization for Security and Cooperation in Europe and the Council of Europe.

66. Faced with armed bandits operating out of Dagestan, who threatened the sovereignty of the State, the Government of the Russian Federation had done what any other State would have done to defend national unity and the territorial integrity of the Federation. Unfortunately, as in any war, civilian losses were inevitable. Nevertheless, any soldier guilty of violating international humanitarian law would be prosecuted and sentenced.

67. In conclusion, Mr. Kartashkin urged the NGOs and experts to show more objectivity in considering the human rights situations brought to their attention.

68. The CHAIRPERSON pointed out that the human rights situation in Chechnya had already been examined by the Commission on Human Rights.

69. Mr. PINHEIRO said he believed that some years earlier the Sub-Commission had expressed the wish that experts should not speak of the human rights situation in their own country.

70. Mr. PREWARE said that if the Sub-Commission applied that rule it might deprive itself of valuable and objective information on certain situations.

71. Mr. KARTASHKIN expressed the view that, in exceptional cases, an expert could speak of the human rights situation in his own country if he had objective information to communicate to the Sub-Commission.

72. Mr. RODRIGUEZ CUADROS said that the three major principles of the Sub-Commission should be prevention, protection and reparation. Accordingly, experts should avoid considerations extraneous to human rights, especially political considerations.

73. In order to prevent human rights violations and contribute to the restoration of any rights that had been violated, the Sub-Commission should enter into a transparent dialogue with NGOs and Governments so as to gather relevant information.

74. Generally speaking, human rights violations, particularly torture, summary executions, arbitrary detention and restrictions on freedom of expression, were linked to impunity and to the absence of the rule of law and democracy. It was therefore necessary to lay emphasis on the fight against impunity and to establish democracy and the rule of law.

75. Mr. QIAO ZONGHUAI (Observer for China) said that the Chinese Government recognized and respected the principle of the universality of human rights and at the same time maintained that it should be applied in the light of the specific situations of countries. Guided by that principle, the Chinese Government and people had found a development path suited to the

situation in China. In two decades, the population living in poverty had fallen from 250 million to 34 million. In the current year, the Chinese Government had decided to launch a campaign to develop the west of the country for the benefit in particular of ethnic minorities.

76. While improving the enjoyment of economic, social and cultural rights, the Chinese Government had also undertaken a series of legislative and legal reforms to protect civil and political rights, to build up democracy, to ensure the impartial administration of justice and to institute the rule of law while enhancing public awareness of law and legal rights.

77. The Chinese Government was keen to ensure appropriate handling of the issue of stability and development, which was why it had banned a sect that was endangering society. The Chinese Government was committed to promoting solidarity and equality among ethnic groups and protecting human rights, including those of the Tibetan people. In that respect he rejected the irresponsible allegations made the previous day regarding the situation in Tibet. The human rights situation in China was better than ever before. That was a historic fact which could not be denied by anybody. The Chinese Government was convinced that promotion and protection of human rights should be realized through dialogue and exchange on the basis of equality and mutual respect, and that the reformed Sub-Commission would surely play its unique, positive role in that regard.

78. Mr. CHATTY (Observer for Tunisia) said that, since the Sub-Commission's fifty-first session, Tunisia had endeavoured to combine democratic development and economic and social development. It had introduced reforms with a view to promoting a genuine democratic culture, strengthening political pluralism and ensuring the effective exercise of the inalienable and indivisible rights of all citizens. It had held the first pluralist presidential elections in its history and parliamentary elections which had admitted opposition parties to the Chamber of Deputies, where they occupied 20 per cent of the seats.

79. As far as the administration of justice was concerned, the duration of police custody had been reduced from 10 days to 3 days renewable only once. Compulsory work in prisons had been abolished and the Penal Code had introduced community tasks as a substitute penalty for imprisonment.

80. The crime of torture had been introduced into the law in accordance with the relevant provisions of international conventions. A bill had been tabled to introduce two levels of jurisdiction in penal matters and to institute the function of visiting magistrate.

81. Measures had been taken to extend the freedom of the press, in particular by setting up a commission of press professionals.

82. On the international scene, thanks to the untiring efforts of President Ben Ali, the Social Summit of Geneva had called for the creation of a world solidarity fund to eradicate poverty.

83. Tunisia was making definite strides with its sustainable development strategy, confident of the support of a people aware of the formidable challenges ahead. For that reason the untruthful allegations of those trading on human rights issues should be considered futile and

intellectually dishonest. Tunisia had never pretended it had achieved all its objectives in the field of human rights, but its political will to improve was genuine. Its keywords were democracy, development and human rights.

84. Mr. HAN SUNG IL (Observer for the Democratic People's Republic of Korea) said that in order to further the promotion and protection of human rights, priority should be given to the right to life, which was a fundamental right. Yet, while human rights organizations had debated at length the enforcement of the death penalty in the world, which meant in practice the execution of less than 3,000 criminals a year, the death of over 10 million innocent people, who were the victims of social evils and extreme poverty, had been practically ignored. The debate about the right to life should therefore be extended to include those two issues.

85. It was the responsibility of the international community to protect children from all forms of exploitation, violence and repression. Although the Convention on the Rights of the Child had become an almost universal instrument, to which all United Nations Members except two had become parties, children still continued to be the victims of serious violations. The sale of children and child prostitution, which were no longer limited to the developing countries but were also rampant in the developed countries, should prompt the international community to expand cooperation for the protection of children. Dialogue and cooperation were a powerful engine for the promotion and protection of human rights. But at the same time the sovereignty of other States should be respected and the principles of impartiality, objectivity and non-selectivity should be observed.

86. Mr. AL HADDAD M. AHMED (Observer for Bahrain) said that the Government of Bahrain had continued to address the social and economic challenges facing the country, through the ongoing pursuit of coordinated policies in the field of employment, education and training and by providing the necessary infrastructure to meet the needs of a young and growing population. The role of civil society had been encouraged through the participation in those activities of over 200 NGOs.

87. Elections were planned for municipal councils and for the Shura Consultative Council. Furthermore, a national institution had been established with a wide-ranging mandate to review human rights issues. Also, a Supreme Council for the Judiciary had been set up to supervise all aspects of Bahrain's justice system.

88. The Government of Bahrain was looking forward to hosting a visit by the Working Group on Arbitrary Detention from 25 February to 3 March 2001. A delegation of Amnesty International had visited Bahrain in June-July 1999, and the International Committee of the Red Cross had continued its programme of visits in accordance with a 1996 Memorandum of Understanding.

89. Mr. FAN Guoxiang considered that the root causes of human rights violations lay both within and among nations. War between nations, particularly through foreign aggression, jeopardized international peace and security. In that respect, the war in Kosovo, in which NATO member countries had resorted to heavy bombardment, had led to extremely serious violations of human rights in the region. Because of its inhuman character, for both Albanians and Serbs, the NATO attack had merely aggravated and complicated instead of alleviating ethnic problems.

90. Moreover, it was unacceptable that countries which had signed arms reduction treaties should not respect them. How was it that, after the end of the cold war, there were still military alliances, military pacts and military bases installed on the territory of foreign countries?

91. It had often happened in human history that praiseworthy principles had been diverted from their goal. Such was the case of the promotion and protection of human rights. Some States had gone so far as to carry out a "humanitarian military intervention" without even giving prior notice to the United Nations Security Council. If humanitarian action was no more than an alternative way of pursuing political aims, it lost its "innocence". While some members of humanitarian organizations gave assistance even at the risk of their lives, others used the pretext of humanitarian intervention for politically motivated enterprises.

92. He wished to state he was against any follow-up to country-specific resolutions of the fifty-first session of the Sub-Commission, such as those on the Republic of the Congo and human rights defenders. He was also against any follow-up to thematic resolutions in which country names were mentioned. Lastly, he wished to express serious reservations regarding the follow-up to the Chairperson's statements on the human rights situations in Togo, Belarus, Indonesia and Mexico, as well as on persons in Nepal claiming to be refugees from Bhutan.

93. Mr. PARK said that the question of the enjoyment of human rights covered two basic aspects. The first was the need to obtain an overall picture of the situation. Thus, several regions and countries of the world (former Yugoslavia, East Timor, Kashmir, Sri Lanka, Sierra Leone and Republic of Congo) remained battlegrounds, where civilians, in particular women and children, suffered worst of all. Those situations were among the challenges which had to be faced.

94. But some progress had also been made. One of the most important successes had been the enlargement of the concept of human rights. While the Universal Declaration of Human Rights remained the bedrock instrument, the notion of human rights had come to encompass a whole range of issues, from the prohibition of genocide to the protection of vulnerable groups such as women and children. In addition, there had been a proliferation of legal instruments and actors in human rights. NGOs, both national and international, had been very active on the human rights front.

95. The second aspect concerned future challenges. One of the most serious hindrances to progress had been the differences between the developed and developing worlds, and between democratic and non-democratic societies. There was also the debate on whether the recognition of human rights was inherent in humanity or whether it varied according to different cultures. Then there was the question of whether economic development should take precedence over the promotion of human rights. But discussing in those terms could lead to extremes. Human rights were critical to economic development, so that the two notions reinforced each other.

96. A further challenge to the primacy of human rights was peace and security. Under the pretext of safeguarding peace and security, Governments engaged in questionable practices. While security was undeniably a basic human right very often individual human rights were ignored or violated in the name of State security.

97. With regard to the role of education in human rights, he welcomed the forthcoming World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

98. The recent summit meeting between the leaders of North and South Korea was bound to have consequences for peace and security, but also for human rights. The two leaders had agreed, amongst other topics, to resolve the problem of unification and humanitarian issues.

99. In his view, the Sub-Commission's new mandate would enable it to perform more effectively.

100. Mr. GOONESEKERE said that the development of violence by non-State actors remained a matter of concern. Over the years, terrorist groups had continued to take hostages, hijack planes, commit murders, etc. Such incidents were alarming and needed to be dealt with. State terrorism, which was the most pernicious form of human rights violation, had not disappeared either. But States had to be answerable for the protection of human rights on their territory.

101. International human rights instruments had been drafted to promote human dignity and to settle differences by peaceful means. Yet civil conflicts were spreading and there was a tendency to try to settle them by force. The fact that weapons were easy to obtain made the situation all the more dangerous. The State had a duty to enforce law and order, provided it remained within the limits prescribed by international law for situations of armed conflict. The task of a body like the Sub-Commission was precisely to ensure that measures taken by States to restore order were not excessive.

102. The situation regarding terrorist groups was more alarming, since they acted with total disregard for laws and individuals and were answerable to no one. The fact that a cause was just did not justify applying different standards to non-State actors. It was therefore time for the international community to consider the issue of the behaviour of non-State actors. Multinational companies were expected to abide by human rights rules. Why then could the same not be demanded of groups engaged in armed struggle to defend their cause? It should not be forgotten that the cause of human rights had to be held above any other.

103. Even if that principle were accepted, however, the international community should of course not remain indifferent when millions of people fell victim to their Government's policies. The embargoes applied in such situations brought back memories of the discredited policies of former colonial powers, which had found it quite natural ruthlessly to eliminate any challenge to their authority abroad. While sanctions might at times be necessary, they needed to be constantly reassessed in the light of objectives. In the matter of relations between individuals as between nations, there was always room for compassion, as Gautama Buddha had said 2,500 years earlier.

104. Ms. HAMPSON said she would like to have a list of country situations which had already been drawn to the attention of the Commission on Human Rights.

The meeting rose at 1 p.m.

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SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-second session

SUMMARY RECORD OF THE 6th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 4 August 2000, at 10 a.m.

Chairperson: Ms. MOTOC

CONTENTS

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (continued)

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GE.00-14620 (E)

CONTENTS (continued)

COMPREHENSIVE EXAMINATION OF THEMATIC ISSUES RELATING TO THE ELIMINATION OF RACIAL DISCRIMINATION:

(a) SITUATION OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

(b) XENOPHOBIA

(c) WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

The meeting was called to order at 10.10 a.m.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (agenda item 2) (continued) (E/CN.4/Sub.2/2000/4-8, 35, 36, 38 and 39; E/CN.4/Sub.2/2000/NGO/1 and 2; E/CN.4/2000/30)

1. The CHAIRPERSON invited the Sub-Commission to continue consideration of agenda item 2.

2. Mr. ALFONSO MARTÍNEZ said that, in dealing with agenda item 2, the Sub-Commission had often given precedence to violations of a certain category of rights, namely civil and political rights, to the detriment of economic, social and cultural rights. Yet, as Ms. Warzazi and Mr. Guissé had clearly shown, all of those rights were interdependent and indissociable. Furthermore, the emphasis placed by the Sub-Commission on violations in developing countries suggested that developed countries were not affected by such situations. However, it was enough to look at recent events in Germany, which had been the scene of racist attacks, and to read the part of the 1998 Amnesty International report on the United States of America, which referred to the application of the death penalty to minors and mentally handicapped persons, the situation in prisons and discrimination against minorities, to be convinced that there were also human rights violations in developed countries.

3. The military operations conducted in Kosovo under the guise of "humanitarian intervention" were contrary to international law, including Article 2 and Chapter IX of the Charter of the United Nations. It was intolerable, moreover, that soldiers of the peacekeeping forces supposed to be protecting the population should have committed violations in that part of the Federal Republic of Yugoslavia.

4. Mr. EIDE said that, 20 or 30 years previously, repressive Governments had deliberately violated the rights of their citizens, particularly in countries of the socialist bloc and in South America, whereas most Governments now were democratic and recognized human rights. Although at first sight that might seem encouraging, it had to be admitted that some perpetrators of massive violations in the past still enjoyed impunity. In that regard, the trial of General Pinochet and his accomplices in Chile would be of crucial importance for the future rule of law in Latin America.

5. Violations now had a different nature and different causes from those of the past. First of all, there was the problem of the inability of some Governments, because of internal political divisions, to acknowledge and take action to fulfil their duties under international human rights instruments. It would be worth reflecting on how to make sure that States applied the principles set forth at a previous meeting by Mr. Yokota concerning the duties of the State with regard to human rights, which included prevention, respect, protection, sanction and remedies. The United States, to take one example, was a country that could be said to have a very mixed record on human rights. During the twentieth century it had twice come to the rescue of Europe and

had played a leading role in creating the international system for the protection of human rights, yet it had been very slow to ratify the relevant instruments. The fact that it was one of only two States not to have ratified the Convention on the Rights of the Child was no coincidence: it was the country that resorted most often to the execution of juvenile offenders. Other shortcomings included the lack of effective protection of human rights in that country. No real action had been taken, for instance, to curb weapons sales and to prevent children from bringing guns to school and using them on other students.

6. An increasingly common problem today was that groups in multi-religious or multi-ethnic societies failed to achieve peaceful accommodation based on mutual respect and tolerance. Fundamentalist religious groups were a matter of concern, particularly in Afghanistan and Pakistan, and the same applied to ethnic groups that sought to dominate or assimilate others. A case in point was that of Turkey, where, according to a statement by the Turkish Minister of Human Rights in the early 1990s, internally displaced Kurds had totalled more than 2 million, and not 360,000, as claimed the previous day by the observer for that country. Also contrary to what the latter had claimed, the Turkish armed forces had set fire to Kurdish villages, forcing their inhabitants to flee. The programme mentioned by the observer for Turkey for encouraging them to return to the villages was certainly to be welcomed, but only if the persons concerned were allowed to go back to their own villages and were not resettled elsewhere.

7. In Sri Lanka, the ethnic conflict had degenerated to the point where a Tamil human rights defender, Neelan Thiruchelvan, had been assassinated the previous year by a terrorist of his own ethnic group and children were now being used as combatants by some factions. Extreme nationalism had also led to massive violations and refugee flows, as exemplified in the Nagorny Karabakh region.

8. Extensive violations continued in Kosovo even though international peacekeeping forces were present, and that raised questions about the ultimate responsibility for those violations.

9. Another set of problems arose from extreme poverty and income inequality in a world of plenty. Like Mr. Guissé and Ms. Warzazi, he thought that armed conflicts were closely linked with poverty. The Sub-Commission should also address the serious question of the arms trade, from which the economic benefits went to the rich in the industrialized countries, while the poor in developing countries bore the heavy cost in terms of human lives.

10. Concerning follow-up to decisions taken at previous sessions, he would like the information provided by Mr. Pinheiro and Mr. Weissbrodt, as well as by himself, to be reflected in the report of the current session. The Sub-Commission would pay close attention to the treatment of the indigenous peoples in Mexico and would monitor the development of democracy in Peru. With regard to Colombia, as stated by Ms. Hampson, the United States should, in cooperation with other States, focus more on the building of an independent system for the administration of justice and less on support to the Colombian armed forces. Indonesia now had a reformist Government but there remained very problematic elements within the armed forces that tended to exploit ethnic differences for their own evil purposes. He also noted with regret that there had not yet been any return of Bhutanese refugees. Despite the dialogue undertaken between the countries concerned and involving the Office of the United Nations

High Commissioner for Refugees, the situation was unchanged and he hoped that the Commission on Human Rights would address that issue at its next session. He urged the two parties to start the verification process and proceed quickly with repatriation.

11. Ms. DAES said that on the threshold of the twenty-first century serious infringements of humanitarian law and violations of human rights were continuing throughout the world. International and regional instruments, basic rules of international law and important resolutions of the General Assembly, the Security Council and other competent bodies of the United Nations system, as well as decisions of international and regional courts on human rights were not being respected. In general terms, she shared the views expressed on that subject by Mr. Weissbrodt, Ms. Hampson, Mr. Eide and Mr. Yokota.

12. The institution of an embargo was, in her view, one of the most inhuman measures that could be applied. Embargoes entailed violations of the fundamental rights of particularly vulnerable groups, including children, women, sick persons, the elderly, minorities and indigenous peoples. She had prepared a draft resolution on that subject recommending that a workshop should be organized by the Office of the High Commissioner for Human Rights, in which experts could participate. The text of the draft would be distributed to members for their consideration and possible adoption.

13. Another serious violation of international law was the military occupation of all or part of a land by foreign forces.

14. In some countries, military forces, paramilitary groups or armed civilians oppressed people, persecuted human rights defenders and tortured individuals. It was time for the international community to react to such grave violations.

15. Lastly, the Sub-Commission should consider more systematically the protection of so-called third-generation rights, which were collective rights and included the right to self-determination, the right to development and the right to a clean environment.

16. Mr. VAHABZADA (Observer for Azerbaijan), speaking in exercise of the right of reply, said that it was for the United Nations bodies and not the Armenian Government to judge how far a country was respecting the international human rights instruments. The Security Council, in its resolutions on the conflict between Azerbaijan and Armenia, had condemned the occupation of Azerbaijani territory and had called for the occupation forces to be withdrawn immediately and unconditionally. Regarding the comments of the observer for Armenia on the right of peoples to self-determination, he would point out that the Security Council, in the same resolutions, had underlined the need to respect territorial integrity and had stressed the illegal nature of the use of force to seize any territory.

17. He wished to draw attention to certain human rights issues that the representative of the Armenian Government had neglected to mention.

18. Mr. JOINET, speaking on a point of order, said that the representative of Azerbaijan was committing the same breach of procedure as the representative of Armenia. He should therefore also be interrupted, for the sake of fairness.

19. The CHAIRPERSON reminded the observer for Azerbaijan that statements made in exercise of the right of reply were governed by the same rules as other statements.

20. Mr. SHRESTHA (Observer for Nepal), speaking in exercise of the right of reply, said that his Government had made every possible effort to begin the verification process in the refugee camps promptly. Nepal had participated in the Ministerial Joint Committee meetings held in Bhutan in May 2000, during which the Nepalese negotiators had sought to accommodate the often inflexible Bhutanese stand on technical and other details of the joint field verification. The talks, however, had ended rather inconclusively. His Government was still awaiting a response from Bhutan to its proposal to move the process forward.

21. The Bhutanese refugee problem was not a problem of Nepal alone, but a problem also of the international community. Nepal called for a collective effort so that the refugees would be able to return to their country in safety and without delay.

22. Ms. RUSTAM (Observer for Indonesia) said that the multi-dimensional crisis inherited from previous regimes which her Government was now still facing, including the inter-community violence in various parts of the country, was very complex and often driven by local economic and social disparities.

23. Her Government was making every effort, through dialogue rather than confrontation, to put an end to the conflicts, such as those in Aceh, in the Moluccas and in Papua, with a view to promoting national reconciliation.

24. With regard to the conflict in the Moluccas, the Government had from the beginning engaged religious and community leaders in dialogue to re-establish enduring peace in the islands. On 26 June 2000, however, in the face of the ferocity of the clashes, the Government had declared a state of emergency there and had conducted a naval blockade to prevent suspicious elements from entering the territory and smuggling of arms and ammunition.

25. In addition, her Government was continuing to make sure that members of the armed forces did not side with any of the various factions and had taken strong action against those who had violated the code of conduct. The Government was also continuing to apprehend members of armed groups coming from outside the area. It hoped to restore law and order soon in the Moluccas and to promote reconciliation among the people in those islands.

26. Regarding Aceh, the Government had signed a joint understanding with GAM for a humanitarian pause in order to provide assistance to the areas affected by the conflict, to reduce tension and to promote confidence-building. Both sides had confirmed their commitment to honour the understanding in a spirit of cooperation and good will. As a result, the situation in the field was slowly returning to normal.

27. Lastly, her delegation wished to thank those speakers who had offered to help the Indonesian Government in resolving the problems it faced and to improve the human rights situation in the country.

28. Mr. KIM YONG HO (Observer for the Democratic People's Republic of Korea) said that his delegation categorically rejected the allegations made by Mr. Yokota against his country with regard to the issue of disappearances. The problem of disappearances did not, in fact, arise at all in the Democratic People's Republic of Korea. However, it was a chronic problem in Japan. In that country, a girl kidnapped 10 years previously in Niigata had recently reappeared in the very location from which she had been abducted.

29. The CHAIRPERSON reminded the observer for the Democratic People's Republic of Korea that, under the rule established by the Sub-Commission, States should confine their replies to the human rights situation in territories under their jurisdiction.

30. Mr. KIM YONG HO (Observer for the Democratic People's Republic of Korea) pointed out that Japan had forced some 6 million Koreans to serve on the battle fields and in the mines, and had obliged some 200,000 Korean girls and women to become sex slaves for the Japanese army, and that a million Koreans had perished under the colonial regime imposed by Japan in the Korean peninsula for more than 40 years. That was why the entire Korean people and the international community were continuing to call on Japan to apologize for those crimes against humanity and compensate the victims.

31. The CHAIRPERSON reminded the speaker once again of the rule she had just explained.

32. Mr. KIM YONG HO (Observer for the Democratic People's Republic of Korea) urged the members of the Sub-Commission to uphold the principles of objectivity and impartiality which they were expected to observe as independent experts.

33. Mr. EIDE said that, unlike Indonesia's statement in exercise of the right of reply, which had been both constructive and encouraging, the remarks of the Democratic People's Republic of Korea were not at all relevant to the topic under consideration and appeared to be a diversionary manoeuvre.

34. Mr. AKRAM (Observer for Pakistan) said that no rule of procedure could prevent Pakistan from advocating the right of the people of Kashmir to exercise their right to self-determination in a free and fair referendum, in conformity with the promise made to them by the United Nations through a resolution of the Security Council.

35. He had recently visited Azad Kashmir and had seen the many refugees who had had to flee from occupied Kashmir. He had also witnessed Indian artillery shelling over the control line.

36. The CHAIRPERSON reminded the speaker that observers for Governments were entitled to speak only about human rights violations in territories under their jurisdiction.

37. Mr. AKRAM (Observer for Pakistan) said that Kashmir was a disputed territory and the rule in question was therefore not applicable. Moreover, if it were no longer possible to speak of the rights of peoples such as the people of Jammu and Kashmir, the Sub-Commission would cease to have any raison d'être.

38. Mr. EIDE said that no one was denying Pakistan the right to speak about Jammu and Kashmir in forums other than the Sub-Commission.

39. Mr. SULAMAIN (Observer for Nigeria) said that, contrary to what had been claimed by the International Commission of Jurists, the death penalty could not be applied in Nigeria to persons under 18 years of age. Even in cases where juveniles had been convicted of capital offences, the death sentence had been commuted to terms of imprisonment.

40. With regard to the case of Mr. Chidiebere Onuoha, who had been found guilty of armed robbery, sentenced to death and executed, it should be pointed out that the person in question had been well over 18 years of age at the time of the commission of the offence. That execution did not, therefore, constitute either a breach of Nigeria's national legislation or a violation of the international instruments in force, including the Convention on the Rights of the Child.

41. Ms. DEMA CHODEN (Observer for Bhutan) said that the observer for Nepal had incorrectly portrayed the nature of the problem of the refugees in the camps in eastern Nepal and the status of the bilateral talks between Bhutan and Nepal. The Sub-Commission had already been apprised of the various initiatives taken and progress made in that regard. Her delegation hoped that the observer for Nepal was not seeking to undermine the recent positive developments in the bilateral process between the two countries.

42. Mr. PRASAD (Observer for India) recalled that the day before the observer for Pakistan had been interrupted by the Chairperson because he had raised the issue of human rights in India. At the current meeting, on the pretext of availing himself of the right of reply, the observer for Pakistan had again overstepped the Sub-Commission's rule. The Indian delegation therefore requested that the comments made by the observer for Pakistan on that occasion should be left out of the summary record.

43. Mr. SHRESTHA (Observer for Nepal) said that the Government of Nepal was firmly committed to seeking a lasting solution to the problem of Bhutanese refugees through bilateral negotiations with Bhutan and he hoped that the refugees would be able to return home as soon as possible in accordance with international rules.

44. Mr. AKRAM (Observer for Pakistan) recalled for the benefit of the Indian delegation that agenda item 2 was entitled "Question of the violation of human rights ... in all countries, with particular reference to colonial and other dependent countries and territories ...". Jammu and Kashmir fell into that category. According to the Security Council resolution, it was a disputed territory. For the time being, the territory was part of neither India nor Pakistan. By virtue of its mandate, the Sub-Commission had to examine serious human rights violations committed on that dependent territory.

45. Mr. EIDE said that the Sub-Commission was in no way trying to stop the question of human rights in Jammu and Kashmir being discussed. In fact, the NGOs and experts present had been left free to express their views on the matter without being interrupted. The aim of the Sub-Commission's rule in that respect was to prevent States from using the Sub-Commission as a forum for airing their political differences.

46. Mr. SHARAT SABHARWAL (Observer for India) said that the rule also applied to Pakistan. Therefore, the comments made by that country's observer regarding Jammu and Kashmir should not appear in the summary record.

47. Mr. JOINET said that the press release had mentioned the comments made by the observer for Armenia. He thought, therefore, that in all fairness the same should apply to the comments made by the observer for Azerbaijan, even though he had himself asked for the latter's statement to be interrupted.

48. Referring to a comment made by Ms. Warzazi, he wished to make it clear, with regard to elections in Austria, that his comments had been directed neither at the Austrian Government nor at the Austrian people, but only at the leader of a xenophobic Austrian party.

49. Mr. GUISSÉ, in reply to Mr. Joinet, said that his comments on Zimbabwe had been aimed only at facilitating the search for a peaceful and democratic solution to the problems facing that country. He had obviously had no intention of favouring any particular group or race.

50. Mr. FAN Guoxiang suggested that the Sub-Commission might discuss in private the matter of how far Government observers should be permitted to express their views on particular issues.

51. The CHAIRPERSON said she had taken note of the request. With that, consideration of agenda item 2 was closed.

COMPREHENSIVE EXAMINATION OF THEMATIC ISSUES RELATING TO THE ELIMINATION OF RACIAL DISCRIMINATION:

(a) SITUATION OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES;

(b) XENOPHOBIA;

(c) WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

(agenda item 3) (E/CN.4/Sub.2/2000/11; E/CN.4/Sub.2/2000/NGO/8 and 15; A/CONF.189/PC.1/13 and Add.1)

52. Ms. MORENO FONTES CHAMMARTIN (International Labour Organization - ILO) said that ILO attached great importance to the preparations for the World Conference against Racism, which was to address, inter alia, the spread of xenophobia, which was directed in particular against migrant workers. ILO had already launched a project entitled "Combating discrimination against (im)migrant and ethnic minority workers in the world of work". ILO research had found that at least one in every three migrant or ethnic minority job applicants was the victim of discrimination. ILO had established an inventory of anti-discrimination measures to be adopted by employers, workers, communities and Governments. It had also recommended to the United Nations treaty bodies, particularly the Committee on Economic, Social and

Cultural Rights, that they pay particular attention within their respective mandates to the consideration of measures to protect migrant workers' rights, especially the right to equality in employment.

53. ILO suggested that the following items be included in the agenda of the World Conference against Racism: assessment of the phenomenon; determination of priorities; review of applicable international standards and mechanisms; identification of the most effective means of countering the phenomenon; and international coordination and monitoring. ILO was in a position to contribute a considerable body of specific data on discrimination against migrant workers in some countries and on anti-discrimination measures already implemented by Governments and by employers' and workers' organizations.

54. ILO was convinced that the Conference would lead to improved compliance with United Nations and ILO standards outlawing discrimination against migrant workers.

55. Mr. BOSSUYT (Special Rapporteur), introducing his preliminary report on the concept and practice of affirmative action (E/CN.4/Sub.2/2000/11), said that he had undertaken the study at the request of the Committee on the Elimination of Racial Discrimination, of which he was now a member. His next report on the matter would reflect the replies of Governments to the questionnaire recently sent to them, which was annexed to the preliminary report.

56. The first part of the report dealt with the concept of affirmative action in international law, reviewing, in particular, special measures on behalf of particular groups under a number of international treaties. He had also studied the travaux préparatoires of the treaties and the precedents established by the main treaty bodies.

57. The second part of the report dealt with the limits set on affirmative action. International law set two major limits on such measures: they should not lead to discrimination and they should be temporary. The question was at what point were special measures no longer warranted and who was to determine when that point had been reached.

58. There was also a certain amount of ambiguity in the terms used. It was now universally agreed that the term "discrimination" should be confined to arbitrary or unlawful differences in treatment. The word "distinction" was a neutral term used in cases where it had yet to be established whether a difference in treatment was justified. The term "differentiation", on the other hand, was used when the difference in treatment was deemed to be lawful.

59. Discrimination, in the generally accepted sense of the term, denoted treatment motivated by a specific aim. The Charter of the United Nations, for example, mentioned 4 such motives (race, language, religion and sex) and the Universal Declaration of Human Rights mentioned 12. But it was not the motive as such that determined whether discrimination had occurred. Another relevant factor was the area in which treatment had differed, i.e. a right or freedom guaranteed either by international treaties or by constitutions or other national legislation. The really decisive factor was the link between the motive and the right in respect of which the difference in treatment had occurred. In the case of affirmative action, there should be a demonstrable link

between the two. In other words, the motive should be relevant to the right in question. The objective to be attained through the affirmative measure was not necessarily of sufficient importance to justify any difference in treatment.

60. Mr. JOINET said that Mr. Bossuyt's preliminary report was on the right track. He had used the document in France before the Court of Cassation when it had been considering the question of the right of self-determination of the Kanak people of New Caledonia. The Court of Cassation had expressed the view that the concept of affirmative action was lawful in that case.

61. Mr. FAN Guoxiang said that the report was very comprehensive. In Asian countries such as China, the concept of affirmative action also existed but its content was different. He noted that it had originated in the United States of America with the civil rights movements which advocated the adoption of special measures on behalf of women and minorities. The concept had led to problems later on, having been viewed as discriminatory by men and majorities.

62. He thought that the concept of affirmative action should be fleshed out and made more explicit, especially its fields of application in different countries, before it became a norm of international law. He also thought that the language used in the report should be made more accessible to lay people and that there should be more reference to case law. Lastly, he considered that the idea that affirmative action measures should be temporary was questionable.

63. Mr. EIDE said that equality between human beings was a fundamental principle b.. the achievement of equality in practice sometimes called for certain adjustments. The distinction between (temporary) affirmative action and (permanent) protective measures on behalf of minorities was, in his view, very useful. However, it was sometimes difficult to determine - hence the need to shed more light on the subject.

64. He thought that greater account should be taken of international instruments pertaining to minorities such as the Framework Convention for the Protection of National Minorities and the International Convention on the Elimination of All Forms of Racial Discrimination. He also observed that considerable emphasis had been placed, since the Second World War, on the rights of persons belonging to minorities, which had important implications for the discussion.

65. Mr. SIK YUEN said he was pleased to note that the term "affirmative action" had replaced "positive discrimination". The fact that, according to the report, affirmative action could not in itself be viewed as discriminatory was, in his view, a crucial point.

66. He considered that the concept of affirmative action already formed part of international law, as evidenced by the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women. It was a concept that substantially contributed to the promotion of respect for human rights. In a country like Mauritius, it would have taken a long time to realize the population's true aspirations if the principles of affirmative action had not been applied immediately after independence.

67. To elucidate further the concept of affirmative action, the report should provide examples of situations in which it had been applied and of the results achieved. For example, the adoption

of tax measures designed to encourage business firms to employ disabled persons could produce excellent results within a short time. He therefore recommended that the Special Rapporteur should focus on the practical aspects of affirmative action.

68. Mr. GOONESEKERE said that the adoption of affirmative action measures on behalf of a particular group inevitably had consequences that other groups viewed as undesirable. That had been the case in Sri Lanka, where such measures had been taken in higher education when the Government noticed that the existing system of obtaining access to university, based on strict equality, or a meritocracy, tended to place students from rural areas with fewer educational facilities at a disadvantage. After the reform, the number of students from rural areas had increased considerably. But as a corollary of the reform, the number of students from the Tamil community had declined. Although the Supreme Court of Sri Lanka had ruled that the measures were constitutional inasmuch as they were temporary and in line with the general interest, the Tamils viewed them as a deliberate policy aimed at curbing their access to higher education and their dissatisfaction grew. Thus, affirmative action measures, which in some respects were undeniably encouraging, could have disastrous consequences when they were not properly understood.

69. He recommended that Mr. Bossuyt should also take into account the affirmative action measures contemplated by the Indian Constitution and the decisions taken by the Supreme Court of India in that connection.

70. Ms. DAES complimented Mr. Bossuyt on his preliminary report, which clearly set forth the basic principles of equality and non-discrimination. She shared the view of the Special Rapporteur that affirmative action consisted of special measures applied on a temporary basis. Referring to paragraphs 27 and 28 of the report concerning the Gerhardy v. Brown case, she said that the ruling by the Australian Supreme Court in that case constituted a milestone in the development of aboriginal land rights. She could provide Mr. Bossuyt with more recent decisions on such issues and recent legislation on indigenous populations adopted, in particular, in New Zealand and the United States. She also recommended that he give greater attention to the affirmative action taken on behalf of indigenous populations in virtually all parts of the world. She found the proposed questionnaire useful and urged Governments to respond to it.

71. Mr. JOINET, referring to Mr. Fan Guoxiang's statement, said that the Special Rapporteur himself had acknowledged that affirmative action could entail certain risks and should therefore be "carefully framed". But the special measures referred to in the context of affirmative action were not particularly exceptional. They resembled measures taken in states of emergency, when rights were temporarily limited for different reasons. When the desired aim was achieved, the emergency measures could be revoked.

72. At the practical level, he urged the Special Rapporteur to examine further whether there was a connection between affirmative action and the exercise of the right of self-determination. States had been known to pursue a settlement policy in order to annex a region, as France had done, for example, in New Caledonia. That kind of population policy inevitably had electoral implications. In some cases, therefore, democracy demanded that affirmative action be taken to prevent settlement policies from leading to imbalance in the electorate.

73. Mr. WEISSBRODT, referring to the working paper he had introduced the previous year on the rights of non-citizens and the comments and suggestions made on the subject, said that he had prepared a further, more expanded document, which was still in draft form and to be viewed as a work in progress. He hoped that his work would prove useful to the Special Rapporteur who would be entrusted with the task of preparing a comprehensive study on the matter.

74. His document reviewed existing jurisprudence regarding the rights of non-citizens, building on the previous year's work. He had consulted for the purpose the concluding observations of the Committee on the Elimination of Racial Discrimination (CERD) and those of other human rights treaty monitoring bodies.

75. The document also reviewed the jurisprudence of regional institutions, for instance the way in which the rights of non-citizens were protected in a number of European treaties.

76. Furthermore, the draft offered tentative conclusions and recommendations and identified areas requiring further study. A key conclusion was that any study of discrimination against non-citizens should take into account several critical factors, including the situation of different categories of non-citizens in relation to various categories of rights in countries at different stages of development and offering different rationales for such distinctions.

77. He hoped that his work and the comprehensive study authorized by the Economic and Social Council would assist CERD, other United Nations bodies, regional organizations and the international community as a whole in examining the distinctions made between different categories of non-citizens. He suggested that the Sub-Commission should consider the matter in cooperation with CERD and the Human Rights Committee. In addition, the Sub-Commission's work on non-citizens could contribute to the deliberations of the forthcoming World Conference against Racism.

78. One key goal of the comprehensive study should be the development of a standard for the purpose of ensuring that any distinctions were legitimate and did not constitute discrimination. The report might also suggest to CERD that it withdraw its somewhat outdated general recommendation 11 and prepare a general recommendation that took into account new developments in the field.

79. In conclusion, he expressed concern about continued discriminatory practices against non-citizens, which demonstrated the absence of effective standards relating to them. Moreover, the emergence of supranational legal entities such as the European Union and the North American Free Trade Agreement necessitated a review of the question of non-citizens' rights.

80 Mr. PREWARE expressed regret that the two World Conferences to Combat Racism and Racial Discrimination organized by the United Nations in 1978 and 1983 and the proclamation of three Decades to combat racism had failed to arrest the phenomenon.

81. The transformation in South Africa gave cause for hope, but developments in other parts of the world underscored the need for sustained initiatives by bodies such as the Sub-Commission. The promotion and protection of human rights called for the elimination of obstacles everywhere to the exercise of human rights by all. In that connection, the upsurge in xenophobia in certain societies would inevitably provoke international friction.

82. Xenophobia could arise from fear on the part of individuals who thought they alone were entitled to the benefits offered by the State and the community. A xenophobic individual was concerned to preserve jobs and opportunities for "natives", who were defined not only in terms of parentage and place of birth but also in terms of colour and culture. A xenophobe was intolerant of migrant workers and failed to recognize that foreigners had the right and ability to contribute positively to the community.

83. New information technology was used to spread racial hatred. The Special Rapporteur of the Commission on Human Rights on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, in his report to the United Nations General Assembly at its fifty-fourth session, had drawn attention to the significant increase in the number of Web sites spreading extremist ideas.

84. It should not be inferred from the fact that many remained silent in the face of racial hatred and xenophobia that the majority approved of such behaviour. Those who had the moral courage and political will to speak out against it were to be commended. The European Union had clearly demonstrated that it viewed such phenomena as dangerous and unacceptable by imposing sanctions on a member State that had accommodated in its Government political elements that supported xenophobic ideas.

85. It was not enough to recognize a threat; preventive or corrective action was also necessary. Governments had a responsibility to create a social environment, especially through education, that was more open to all, irrespective of colour, race, belief or country of origin.

86. The forthcoming World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance should encourage more vigorous action to eliminate racism and xenophobia.

87. Mr. BOND (International Human Rights Law Group), drawing attention to racial discrimination in the United States, referred to a particularly pernicious aspect, namely the disguising of such discrimination by attributing it, for example, to the "war on drugs" and to crime prevention. Racial discrimination was endemic in the United States criminal justice system. People of colour were often presumed guilty, arrested, subjected to police brutality and even killed on account of their race. African Americans accounted for 50 per cent of the American prison population although they represented only 6 per cent of the population as a whole. Young Blacks were more likely than Whites to be arrested and incarcerated and they were also given longer prison terms. Women of colour were also subject to forms of racial discrimination that were compounded by gender discrimination.

88. On behalf of the International Human Rights Law Group, he urged the United Nations to call on the Government of the United States of America to honour its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination and other human rights treaties, to withdraw its reservations thereto, and to submit timely and accurate reports referring specifically to the issue of racial discrimination and racial bias in the criminal justice system. He also urged the United Nations to examine cases of racial discrimination in the United States criminal justice system and to consider sending Special Rapporteurs on mission to the United States. Lastly, it called for the inclusion of the issue of racial discrimination and racial bias in the American criminal justice system as a separate item on the agenda of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

89. Ms. WARZAZI noted with concern that the States parties to the International Convention on the Elimination of All Forms of Racial Discrimination did not seem to be honouring their commitments. Indeed the situation had been deteriorating for some 10 years. Thanks to the votes of a worrying percentage of the electorate, members of neo-Nazi parties and extreme right-wing racists were being hoisted into positions of power or at least held political office in municipal and local councils. The Internet was one of the means used to spread racist ideas.

90. There had also been outbreaks of racism and violence in Africa and Asia, where armed attacks and killings had claimed many innocent victims. The third World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance should produce short- and long-term solutions, but they would only be put into practice if the countries concerned showed real political will and committed themselves, both politically and financially, to the task of countering all forms of racism. One of the first steps to be taken by a number of Western countries was to withdraw their reservation to article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination. When a country such as France enacted legislation that condemned statements or writings that cast doubt on the Holocaust, there was no reason why the legislation should fail to mention racism and racial discrimination.

91. Noting that article 1, paragraph 2, of the International Convention was inconsistent with article 2 of the International Covenant on Civil and Political Rights, she urged that its content be made more explicit so that the distinctions between citizens and non-citizens did not affect access to public service in a country, as stipulated in article 25 of the Covenant.

92. It should be possible for victims of racism and racial discrimination to appear before CERD when it considered the report of the State party concerned and to file petitions under the 1503 procedure so that gross and massive violations of their human rights were brought to the attention of the Commisssion on Human Rights just like other violations.

93. She was concerned about the deterioration in the living conditions of migrant workers, whether or not their papers were in order, and about the number of cases in which persons who were seeking some means of subsistence lost their lives in what were sometimes the most atrocious circumstances. It was important for host States to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

94. She deplored the anomalous inconsistency between the developed countries' need for manpower and their determination to erect barricades. Traffickers were earning billions of dollars from the trade in illegal workers. As the European countries and Japan experienced shortages of young manpower, the developing countries yet again contributed to their wealth by supplying them with labour, including brainpower. Migrant workers clearly needed international protection; they alone were not covered by an international instrument because the existing instrument was rejected by the developed countries. She therefore hoped that the World Conference would recommend the establishment, within the United Nations, of a monitoring body which, in coordination with ILO, could keep a close eye on the situation of migrant workers, who more and more frequently tended to be women.

95. Lastly, she suggested that the Sub-Commission should propose to the General Assembly at its next session that it proclaim 18 December each year a day of solidarity with migrant workers.

The meeting rose at 1 p.m.